रजिस्ट्री सं. डी. एल.-33001/95 REGISTERED NO. DL-33001/

भारत का राजपत्र
The Gazette of India

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० 5] नई दिल्ली, शनिवार, फरवरी 3, 1996/माघ 14, 1917
No. 5] NEW DELHI, SATURDAY, FEBRUARY 3, 1996/MAGHA 14, 1917

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-Section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किये गये सांविधिक आदेश और अधिसूचनाएं।
Statutory Orders and Notifications Issued by the Ministries of the Government of India (Other than the Ministry of Defence)

कार्मिक, लोक शिकायत और पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 16 जनवरी, 1996

का.आ. 280.—केन्द्रीय सरकार, दिल्ली विशेष पुलिस स्थापन अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, निम्नलिखित अपराधों को ऐसे अपराधों के रूप में विनिर्दिष्ट करती है जिनका अन्वेषण दिल्ली विशेष पुलिस स्थापन द्वारा किया जाना है, अर्थात :

(क) बेनामी लेनदेन (निषेध) अधिनियम 1988 (1988 का अधिनियम 45) की धारा 3 के अधीन दंडनीय अपराध।

(ख) ऊपर उल्लिखित किसी एक अपराध या अधिक अपराधों के संबंध में या उससे/उनसे संसक्त प्रयत्न, दुष्प्रेरण तथा षड्यंत्र और उन्हीं तथ्यों से उद्भूत वैसे ही संव्यवहार के अनुक्रम में किया गया या किए गए कोई अन्य अपराध।

[सं. 228/47/95-ए.वी.डी.-2]

एस. सोन्दर राजन, अवर सचिव

MINISTRY OF PERSONNEL PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 16th January, 1996

S.O. 280.—In exercise of the powers conferred by section 3 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government hereby specifies the following offences as the offences which are to be investigated by Delhi Special Police Establishment, namely —

(a) Offence punishable under section 3 of the Benami Transaction (Prohibition) Act, 1988. (Act No. 45 of 1988).

(b) Attempts, abetments and conspiracies in relation to or in connection with one or more of the offences mentioned above and any other offence or offences committed in the course of same transaction arising out of the same facts.

[No. 228/47/95-AVD-II]

S. SOUNDAR RAJAN, Under Secy.

आदेश

नई दिल्ली, 17 जनवरी, 1996

का. आ. 281.—केन्द्रीय सरकार एतद्द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए हरियाणा सरकार के गृह मंत्रालय के आदेश सं. 20/3/95-3 एच जी आई दि. 10 जनवरी, 1996 द्वारा प्रदत्त हरियाणा राज्य सरकार की सहमति से हरियाणा राज्य में थाना सोहना, जिला गुड़गांव में रजिस्टर्ड प्रथम सूचना रिपोर्ट सं. 93 दि. 14-3-1995 के संबंध में भारतीय दंड संहिता, 1860 (1860 का अधिनियम सं. 45) की धारा 419, 420, 467, 468, 471 और 120-बी, बेनामी संव्यवहार (निवारण) अधिनियम, 1988 की धारा 3 (1988 का अधिनियम 45) विदेशियों विषयक अधिनियम, 1946 (1946 का अधिनियम सं. 31) की धारा 14 तथा विदेशी मुद्रा विनियम अधिनियम, 1973 (1973 का अधिनियम सं. 46) की धारा 50 के अंतर्गत वंदनीय अपराधों तथा उक्त अपराधों से संबंधित अथवा संसक्त प्रयत्नों, दुष्प्रेरणों तथा षडयंत्रों तथा उन्हीं तथ्यों से उद्भूत उसी संव्यवहार के अनुक्रम में किए गए किन्हीं अन्य अपराधों के अन्वेषण के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और अधिकारिता का विस्तारण संपूर्ण हरियाणा राज्य पर करती है।

[सं. 228/47/95—ए. वी. डी.—II]

एस. सोंदर राजन, अवर सचिव

New Delhi, the 17th January, 1996

ORDER

S.O. 281.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Haryana vide Home Department Order No. 20/13/95-3HGI dated 10th January, 1996 hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Haryana for investigation of the offences punishable under sections 419, 420, 467, 468, 471 and 120-B of Indian Penal Code, 1860 (Act No. 45 of 1860) section 3 of the Benami Transaction (Prohibition) Act, 1988, (Act No. 45 of 1988) section 14 of the Foreigners Act, 1946 (Act No. 31 of 1946) and section 50 of Foreign Exchange Regulation Act, 1973 (Act No. 46 of 1973) and attempts, abetments and conspiraries in relation to or in connection with said offences and any other offences committed in the course of the same transaction arising out of the same facts in regard to FIR No. 93 dated 14-3-95 registered at Police Station, Sohna, District Gurgaon in the State of Haryana.

[No. 228/47/95-AVD III]

S. SOUNDAR RAJAN, Under Secy.

नई दिल्ली, 17 जनवरी, 1996

का. आ. 282.—केन्द्रीय सरकार एतद्द्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उपधारा (7) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए श्री मोहन भगवानी, लोक अभियोजक, केन्द्रीय अन्वेषण ब्यूरो, जयपुर को विचारण न्यायालयों में मामलों तथा किसी राज्य अथवा संघ राज्य क्षेत्र में, जिन पर पूर्वोक्त अधिनियम के उपबंध लागू होते हैं, विधि द्वारा स्थापित पुनरीक्षण अथवा अपील न्यायालयों में दिल्ली विशेष पुलिस स्थापना द्वारा संस्थित मामलों में उद्भूत अपीलों, पुनरीक्षणों अथवा अन्य विषयों के संचालन के लिए विशेष लोक अभियोजक के रूप में नियुक्त करती है।

[सं. 225/2/96—ए. वी. डी.—II]

एस. सोन्दर राजन, अवर सचिव

New Delhi, the 17th January, 1996

S.O. 282.—In exercise of the powers conferred by sub-section (8) of section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government herewith appoints Shri Mohan Bhagwani, Public Prosecutor, Central Bureau of Investigation, Jaipur as Special Police Prosecutor for the conduct of cases in Trial Courts and appeals, revisions or other matters arising out Bureau of Investigation, Jaipur as Special Police Establishment in revisional or appellate Courts, established by law in any State or Union Territory to which the provisions of the aforesaid Act applies.

[No. 225/2/96-AVD II]

S. SOUNDAR RAJAN, Under Secy.

वित्त मंत्रालय

(राजस्व विभाग)

आदेश

नई दिल्ली, 15 जनवरी, 1996

का. आ. 283.—भारत सरकार के संयुक्त सचिव ने जिसे विदेशी मुद्रा संरक्षण और तस्करी निवारण अधिनियम, 1974 (1974 का 52) की धारा 3 की उपधारा के अधीन आदेश फा. सं. 673/3 132/91—सी. ए. 8 दिनांक 18-12-1991 की यह निदेश जारी किया था कि श्री मूल शंकर गान्धी सुपुत्र श्री धनराज गान्धी फ्लैट नं.—डी—5/म10, भोगल माडल—3, नई दिल्ली को निरुद्ध कर दिया जाए और केन्द्रीय कारागार, तिहाड़, नई दिल्ली में अभिरक्षा में रखा जाए ताकि उसे भविष्य में विदेशी मुद्रा के संरक्षण के प्रतिकूल कोई भी कार्य करने से रोका जा सके।

2 केन्द्रीय सरकार के पास यह विश्वास करने का कारण है कि पूर्वोक्त व्यक्ति फरार हो गया है या अपने को छिपा रहा है जिससे उक्त आदेश का निष्पादन नहीं हो सके।

3. अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 7 की उपधारा (1) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निर्देश देती है कि पूर्वोक्त व्यक्ति इस आदेश के भारतीय राजपत्र में प्रकाशन के 7 दिन के भीतर पुलिस आयुक्त, नई दिल्ली के समक्ष हाजिर हो।

[फा. सं. 673/432/91-सी. ए.-8]

रूप चन्द, अवर सचिव

MINISTRY OF FINANCE

(Department of Revenue)

ORDER

New Delhi, the 15th January, 1996

S.O. 283.—Whereas the Joint Secretary to the Government of India, specially empowered under sub-section (1) of section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974) issued order F. No. 673|432|91-Cus.VIII dated 18-12-1991 under the said sub-section directing that Shri Mool Shankar Gandhi, S|o Shri Dhan Raj Gandhi R|o D-5|10, Model Town-III, New Delhi be detained and kept in custody in the Central Prison Tihar, New Delhi with a view to preventing him from acting in any manner prejudicial to the augmentation of foreign exchange in future;

2. Whereas the Central Government has reasons to believe that the aforesaid person has absconded or is concealing himself so that the order cannot be executed;

3. Now, therefore, in exercise of the power conferred by clause (b) of sub-section (1) of Section 7 of the said Act, the Central Government hereby directs the aforesaid person to appear before the Commission of Police, IP Estate, New Delhi within 7 days of the publication of this order in the Official Gazette.

[F. No. 673|432|91-Cus.VIII]
ROOP CHAND, Under Secy.

आदेश

नई दिल्ली, 19 जनवरी, 1996

का.आ. 284.—भारत सरकार के संयुक्त सचिव ने जिसे विदेशी मुद्रा संरक्षण और तस्करी निवारण अधिनियम, 1974 (1974 का 52) की धारा 3 की उपधारा के अधीन आदेश फा.सं. 673/83/95-सी.शु. 8 दिनांक 12-7-95 को यह निदेश जारी किया था कि श्री धर्मचन्द लाखरा सुपुत्र श्री केशुराम लाखरा, कमरा नं. 14, प्रथम तल, लक्की मेनसन, 272, एस.बी.एस. रोड, बम्बई-1

(2) दुकान नं. 5, ग्राउण्ड फ्लोर, अप्सरा बिल्डिंग, 282, एस.बी.एस. रोड, फोर्ट बम्बई को निरुद्ध कर लिया जाए और केन्द्रीय कारागार, पूना में अभिरक्षा में रखा जाए ताकि उसे भविष्य में विदेशी मुद्रा के संवर्धन के प्रतिकूल कोई भी कार्य करने से रोका जा सके।

2. केन्द्रीय सरकार के पास यह विश्वास करने का कारण है कि पूर्वोक्त व्यक्ति फरार हो गया है या अपने को छिपा रहा है जिससे उक्त आदेश का निष्पादन नहीं हो सके ;

3. अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 7 की उपधारा (1) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि पूर्वोक्त व्यक्ति इस आदेश के शासकीय राजपत्र में प्रकाशन के 7 दिन के भीतर पुलिस आयुक्त/बम्बई के समक्ष हाजिर हो।

[फा.सं. 673/83/95-सी शु. 8]

रूप चन्द, अवर सचिव

ORDER

New Delhi, the 19th January, 1996

S.O. 284.—Whereas the Joint Secretary to the Government of India, specially empowered under sub-section (1) of section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974) issued order F. No. 673|83|95-Cus. VIII dated 12-7-1995 under the said sub-section directing that Shri Dharam Chand Lakhara S|o Shri Keshu Ram Lakhara, Room No. 14, 1st Floor, Lucky Mension, 272, S.B.S. Road, Bombay-1 (ii) Shop No. 5, Ground Floor, Apsara Building, 282, S.B.S. Road Fort, Bombay-1 be detained and kept in custody in the Central Prison Poona with a view to preventing him from acting in any manner prejudicial to the augmentation of foreign exchange in future.

2. Whereas the Central Government has reasons to believe that the aforesaid person has absconded or is concealing himself so that the order cannot be executed;

3. Now, therefore, in exercise of the power conferred by clause (b) of sub-section (1) of Section 7 of the said Act, the Central Government hereby directs the aforesaid person to appear before the Commissioner|Director General of Police, Bombay within 7 days of the publication of this order in the Official Gazette.

[F. No. 673|83|95-Cus.VIII]
ROOP CHAND, Under Secy.

आदेश

नई दिल्ली, 19 जनवरी 1996

का.आ. 285.—भारत सरकार के संयुक्त सचिव ने जिसे मुद्रा संरक्षण और तस्करी निवारण अधिनियम, 1974 (1974 का 52) की धारा 3 की उपधारा के अधीन आदेश फा.सं. 673/100/95 सी.शु. 8 दिनांक 27-9-1996 को यह निदेश जारी किया था कि श्री पी.के. सूपी अब्दुल्ला, मैसर्स मुथल ट्रेवल सर्विस 112, सुलेमान बिल्डिंग मोहम्मद और कोकिल मार्ग, डोंगरी, बम्बई-9 को निरुद्ध कर लिया जाए और केन्द्रीय कारागार यरवदा में अभिरक्षा में रखा जाए ताकि उसे भविष्य में विदेशी मुद्रा के संवर्धन के प्रतिकूल कोई भी कार्य करने से रोका जा सके।

2. केन्द्रीय सरकार के पास यह विश्वास करने का कारण है कि पूर्वोक्त व्यक्ति फरार हो गया है या अपने को छिपा रहा है जिससे उक्त आदेश का निष्पादन नहीं हो सके ;

3. अतः केन्द्रीय सरकार, उक्त अधिनियम की धारा 7 की उपधारा (1) के खण्ड (ब) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह निदेश देती है कि पूर्वोक्त व्यक्ति इस आदेश के शासकीय राजपत्र में प्रकाशन के 7 दिन के भीतर पुलिस आयुक्त बम्बई के समक्ष हाजिर हों।

[फा.सं. 673/100/95-सी.शु.-8]

रूप चन्द, अवर सचिव

ORDER

New Delhi, the 19th January, 1996

S.O. 285.—Whereas the Joint Secretary to the Government of India, specially empowered under sub-section (1) of section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974) issued order F. No. 673|100|95-Cus. VIII dated 27-9-1996 under the said sub-section directing that Shri P.K. Soopy Abdulla, M|s. Mugal Travel Service, 112, Suleman Building, Mohd. Umer Kokil Marg, Dongri, Bombay-9 be detained and kept in custody in the Central Prison Yerwada with a view to preventing him from acting in any manner prejudicial in the augmentation of foreign exchange in future.

2. Whereas the Central Government has reasons to believe that the aforesaid person has absconded or is concealing himself so that the order cannot be executed;

3. Now, therefore, in exercise of the power conferred by clause (b) of sub-section (1) of Section 7 of the said Act, the Central Government hereby directs the aforesaid person to appear before the Commissioner of Police, Bombay within 7 days of the publication at this order in the Official Gazette.

[F. No. 673|100|95-Cus.VIII]
ROOP CHAND, Under Secy.

आदेश

नई दिल्ली, 19 जनवरी, 1996

का.आ. 286.—भारत सरकार के संयुक्त सचिव ने जिसे विदेशी मुद्रा संरक्षण और तस्करी निवारण अधिनियम, 1974 (1974 का 52) की धारा 3 की उपधारा के अधीन आदेश फा.सं. 673/119/95-सी.शु. 8 दिनांक 1-11-1995 को यह निदेश जारी किया था कि श्री बनवारी लाल सोनी सुपुत्र पूर्णमल सोनी 1/2 जगबन्धु बरल लाईन, तीसरी मंजिल, अपर चितपोरा रोड, कलकत्ता-700007

(2) 17, लेन पुकुरिया प्रथम लाईन, कलकत्ता को निरुद्ध कर लिया जाए और केन्द्रीय कारागार, अलीपुर कलकत्ता में अभिरक्षा में रखा जाए ताकि उसे भविष्य में विदेशी मुद्रा के संवर्धन के प्रतिकूल कोई भी कार्य करने से रोका जा सके।

2. केन्द्रीय सरकार के पास यह विश्वास करने का कारण है कि पूर्वोक्त व्यक्ति फरार हो गया है या अपने को छिपा रहा है जिससे उक्त आदेश का निष्पादन नहीं हो सके ;

3. अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 7 उप धारा (1) के खण्ड (ब) द्वारा प्रदत्त, शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि पूर्वोक्त व्यक्ति इस आदेश के शासकीय राजपत्र में प्रकाशन के 7 दिन के भीतर पुलिस आयुक्त, कलकत्ता के समक्ष हाजिर हों।

[फा.सं. 673/119/95-सी.शु.-8]

रूप चन्द, अवर सचिव

ORDER

New Delhi, the 19th January, 1996

S.O. 286.—Whereas the Joint Secretary to the Government of India, specially empowered under sub-section (1) of section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974) issued order F. No. 673|119|95-Cus. VIII dated 1-11-1995 under the said sub-section directing that Shri Banwarilal Soni, S|o Shri Puranmal Soni 1|2 jagabandhu Baral Lane, 3rd Floor, Upper Chitpara Road, Calcutta-700007. (ii) 17, Hanspukuria 1st Lane, Calcutta be detained and kept in custody in the Central Prison Alipore, Calcutta with a view to preventing him from acting in any manner prejudicial to the augmentation of foreign exchange in future.

2. Whereas the Central Government has reasons to believe that the aforesaid person has absconded or is concealing himself so that the order cannot be executed;

3. Now, therefore, in exercise of the power conferred by clause (b) of sub-section (1) of Section 7 of the said Act, the Central Government hereby directs the aforesaid person to appear before the Commissioner of Police, Calcutta within 7 days of the publication of this order in the Official Gazette.

[F. No. 673|119|95-Cus.VIII]
ROOP CHAND, Under Secy.

आदेश

नई दिल्ली, 19 जनवरी, 1996

का. आ. 287.—भारत सरकार के संयुक्त सचिव ने जिसे विदेशी मुद्रा संरक्षण और तस्करी निवारण अधिनियम 1974 (1974 का 52) की धारा 3 की उपधारा के अधीन आदेश फा.सं. 673/120/95-सी.शु. 8 दिनांक 1-11-1995 को यह निदेश जारी किया था कि श्री निमित जैन उर्फ बबी जैन सुपुत्र श्री सुन्दर लाल जैन, सी.डी. 297, साल्ट लेक सिटी, कलकत्ता-700064

(2) एन.के. उधेसर्स 2, कालीकृष्ण टैगोर स्ट्रीट, कलकत्ता-700007 को निरुद्ध कर लिया जाए और केन्द्रीय कारागार, अलीपुर, कलकत्ता में अभिरक्षा में रखा जाए ताकि उसे भविष्य में विदेशी मुद्रा के संवर्धन के प्रतिकूल कोई भी कार्य करने से रोका जा सके।

2. केन्द्रीय सरकार के पास यह विश्वास करने का कारण है कि पूर्वोक्त व्यक्ति फरार हो गया है या अपने को छिपा रहा है जिससे उक्त आदेश का निष्पादन नहीं हो सके ;

3. अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 7 की उपधारा (1) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह निदेश देती है कि पूर्वोक्त व्यक्ति इस आदेश के शासकीय राजपत्र में प्रकाशन के 7 दिन के भीतर पुलिस आयुक्त कलकत्ता के समक्ष हाजिर हों।

[फा. सं. 673/120/95-सी.शु.-8]

रूपचन्द, अवर सचिव

ORDER

New Delhi, the 19th January, 1996

S.O. 287.—Whereas the Joint Secretary to the Government of India, specially empowered under sub-section (1) of section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974) issued order F. No. 673|120|95-Cus.VIII dated 1-11-1995 under the said sub-section directing that Shri Naisit ain alias Bapi Jain S|o Shri Sunder Lal Jain CD-297, Salt Lake City, Calcutta-700064. (ii) N.K. Jewellers, 2, Kalikrishna Tagore Street, Calcutta-700007 be detained and kept in custody in the Central Prison Alipore, Calcutta with a view to preventing him from acting in any manner prejudicial to the augmentation of foreign-exchange in future.

2. Whereas the Central Government has reasons to believe that the aforesaid person has absconded or is concealing himself so that the order cannot be executed;

3. Now, therefore, in exercise of the power conferred by clause (b) of sub-section (1) of Section 7 of the said Act, the Central Government hereby directs the aforesaid person to appear before the Commissioner|Director General of Police, Calcutta within 7 days of this notification of this Official Gazette.

[F. No. 673|120|95-Cus.VIII]

ROOP CHAND, Under Secy.

(आर्थिक कार्य विभाग)

(बैंकिंग प्रभाग)

नई दिल्ली, 19 जनवरी, 1996

का. आ. 288.—राष्ट्रीयकृत बैंक (प्रबन्ध और प्रकीर्ण उपबंध) स्कीम, 1980 के खण्ड 3 के उपखण्ड (1) के साथ पठित बैंककारी कम्पनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1980 की धारा 9 की उपधारा 3 के खण्ड (ग) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, श्री बी. एस. एम. आचार्य, महाप्रबन्धक, डी. बी. ओ. डी., भारतीय रिजर्व बैंक, केन्द्रीय कार्यालय बम्बई को श्री के. के. दत्ता के स्थान पर कार्पोरेशन बैंक के निदेशक के रूप में नामित करती है।

[सं. एफ. 9/18/95—बी. ओ.—I]

के. के. मंगल, अवर सचिव

(Department of Economic Affairs)

(Banking Division)

New Delhi, the 19th January, 1996

S.O. 288.—In exercise of the powers conferred by clause (c) of sub-section 3 of section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 read with sub-clause (1) of clause 3 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1980, the Central Government hereby nominates Shri B.S.M. Acharya, General Manager, D.B.O.D., Reserve Bank of India, Central Office, Bombay as a director of Corporation Bank vice Shri K. K. Dutta.

[F. No. 9|18|95-B.O.I]

K. K. MANGAL, Under Secy.

केन्द्रीय उत्पाद एवं सीमाशुल्क आयुक्तालय

नागपुर, 8 दिसम्बर, 1995

का.आ. 289.—श्री पी.एन निनावे, अधीक्षक तथा श्री जी.व्ही. कोलते, अधीक्षक, समूह 'ख' केन्द्रीय उत्पाद शुल्क आयुक्त लय, नागपुर, निवर्तन की आयु प्राप्त करने पर दिनांक 30-11-1995 को अपराह्न मे शासकीय सेवा से निवृत हुए हैं।

[फा.सं. II(3)3/95/स्थापना-25946]

आर.जे. लेले, अपर आयुक्त (कार्मिक एवं सतर्कता)

CUSTOMS & CENTRAL EXCISE COMMISSIONERATE

Nagpur, the 8th December, 1995

S.O. 289.—Shri P. N. Ninawe, Superintendent and Shri G. V. Kolte, Superintendent, Central Excise Group 'B' of Nagpur Commissionerate having attained the age of superannuation and retired from Government service on 30-11-1995 in the afternoon.

[C. No. II(3) 3/95/Estt. I/25946]

R. J. BELEY, Addl. Commissioner (P&V)

वाणिज्य मंत्रालय

(विदेश व्यापार महानिदेशालय)

(शुल्क मुक्त स्कीम 2 अनुभाग)

नई दिल्ली, 17 जनवरी, 1996

का. आ. 290.—मैसर्स महाराष्ट्र, सीमलैस लि., 56 हनुमान रोड, नई दिल्ली -110001 को निर्यात आभार रु. 9,18,54,977/- सहित लागत बीमा भाड़ा मूल्य रु. 6,88,00,000/-- (अमेरिकी डालर 2268680) के लिए स्पेशल ईम्पेस्ट लाईसेंस संख्या मूल्य रु. 1525266 दिनांक 25/5/93 के साथ डी ई ई सी बुक संख्या 021.516 दिनांक 25.5.93 भाग-1 (आयात) और भाग-2 (निर्यात) जारी किए गए थे जो लाइसेंस के जारी होने की तारीख से 12 महीनों तक वैध थे। फर्म ने अब इस आधार पर डी ई ई सी बुक भाग-2 (निर्यात) की डुप्लीकेट प्रति जारी करने हेतु आवेदन किया है कि वह गुम /अस्थानस्थ हो गई है। फर्म ने अधिशपथ हलफनामा दाखिल किया है जिसके अनुसार उपर्युक्त डी ई ई सी बुक किसी सीमा-शुल्क प्राधिकारी के पास पंजीकृत नहीं थी तथा उसका बिल्कुल भी उपयोग

नहीं किया गया था। इस आशय की घोषणा भी हलफनामे में शामिल की गई है कि यदि उक्त डी ई ई सी बुक भाग–2 (निर्यात) बाद में मिल जाती है तो उसे जारी करने वाले प्राधिकारी को वापिस कर दिया जाएगा।

2. इस बात से संतुष्ट होने पर कि मूल डी ई ई सी बुक भाग-2 निर्यात गुम हो गई है, अधोहस्ताक्षरी ने निदेश देती है कि आवेदन को डुप्लीकेट बुक भाग–2 निर्यात जारी कर दी जाए। इसके अतिरिक्त विदेश व्यापार विकास और विनियमन अधिनियम 1992 की धारा 9 की उपधारा (4) में प्रदत्त शक्तियों का प्रयोग करते हुए मैं, मूल डी ई ई सी बुक संख्या 024516 दिनांक 25.5.93 भाग 2 (निर्यात) को रद्द करती हूं।

[फाईल सं. 01/82/12/388/ए एम–93/डी ई एस–2/1688]

रीता माथुर, उप महानिदेशक,
विदेश व्यापार कृते महानिदेशक,
विदेश व्यापार

MINISTRY OF COMMERCE

(Directorate General of Foreign Trade)

(DES. II Section)

New Delhi, the 17th January, 1996

S.O. 290.—M/s. Maharashtra Seamless Limitted, 56 Hanuman Road, New Delhi-110001 were granted Special Imprest Licence No. P/L/1525266 dated 25-5-1993 for cif value of Rs. 6,88,00,000 (US $ 2268680) with an Export Obligation of Rs. 9,18,54,977 alongwith DEEC Book No. 024516 dated 25-5-1993 Part I (Import) and II (Export) with a validity of 12 months from the date of issue of the licence. Now the firm have applied for grant of duplicate of DEEC Book Part II (Export) on the ground that the same have been lost/misplaced. The firm have furnished necessary affidavit according to which the aforesaid DEEC Book was not registered with any Customs Authority and was not utilised at all. A declaration has also been incorporated in the affidavit to the effect that if the said DEEC Book Part II (Export) is traced or found later on, it will be returned to the Issuing Authority.

2. On being statisfied that the Original DEEC Book Part II-Export have been lost, the undersigned directs that duplicate DEEC Book Part II-Export should be issued to the applicant. I also, in exercise of the powers conferred in sub-clause (4) of Clause 9 of the Foreign Trade (Development and Regulation) Act, 1992 hereby cancel the Original DEEC Book No. 024516 dated 25-5-1993 Part II (Export).

[F. No. 01/82/42/388/A.M. 93/DES. II/1688]

RITA MATHUR, Dy. Director General of Foreign Trade
for Director General of Foreign Trade

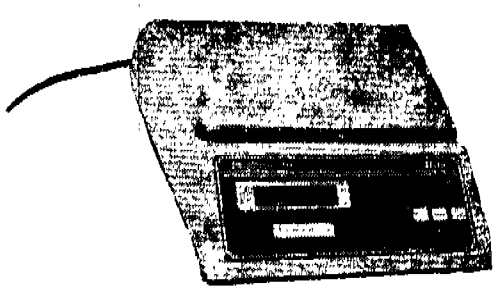
नागरिक पूर्ति उपभोक्ता मामले और सार्वजनिक वितरण मंत्रालय

नई दिल्ली, 16 जनवरी, 1996

का. आ. 291.——केन्द्रीय सरकार को विहित प्राधिकारी द्वारा उसे प्रस्तुत की गई रिपोर्ट पर विचार करने के पश्चात् समाधान हो गया है कि उक्त रिपोर्ट में वर्णित माडल बाट और माप मानक अधिनियम, 1976 (1976 का 60) और बाट और माप मानक (माडल का अनुमोदन नियम, 1987 के उपबंधों के अनुरूप है और इस बात की संभावना है कि उक्त माडल लगातार प्रयोग की अवधि में यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा देता रहेगा;

अतः केन्द्रीय सरकार उक्त अधिनियम की धारा 36 की उपधारा (7) और उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए "साईट" ट्रेड नाम वाले वर्ग 3 के स्मार्ट स्केल 901 सिरीज टाईप के स्वतः सूचक गैर–स्वचालित टेबल टाइप तोलन उपकरण के माडल का जिसे इसमें इसके पश्चात माडल कहा गया है। जिसका विनिर्माण मैसर्स एनकाडियो राइट इलेक्ट्रानिक्स लखनऊ द्वारा किया गया है और जिसे अनुसंदन चिह्न आ. एन. डी 09/95/14 समनुदेशित किया गया है, अनुमोदन प्रमाणपत्र प्रकाशित करती है ;

माडल (आकृति देखिए) एक मध्यम यथार्थता वर्ग (3) का तोलन उपकरण है जिसकी अधिकतम क्षमता 20 किलोग्राम और न्यूनतम क्षमता 100 ग्राम है। सत्यापन मापमान अन्तर (ई) 5 ग्राम है। इसमें एक टेयर युक्ति है जिसका व्यकलनात्मक प्रतिधारण टेयर प्रभाव 100 प्रतिशत है आधार और प्लेटफार्म वास्तिक है। भारग्राही आयतकार आकृति का है जिसका पार्श्व 360 × 360 कि.मी. प्रकाश उत्सर्जन डायोड संप्रदर्श तोल परिणाम उपदर्शित करता है। यह उपकर 230 वोल्ट 50 हर्टेज के प्रत्यावर्ती धारा विद्युत प्रदाय पर प्रचालित होता है।



आगे, केन्द्रीय सरकार यह घोषणा करती है कि माडल के अनुमोदन के इस प्रमाणपत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धान्त के अनुसार और उसी सामग्री से जिससे अनुमोदित माडल का विनिर्माण किया गया है विनिर्मित 2 किलोग्राम, 5 किलोग्राम, 10 किलोग्राम और 20 किलोग्राम की अधिकतम क्षमता वाले समरूप वैक यथार्थता और उसी सिरीज के कार्यकरण वाले तोलन उपकरण भी है।

[फा. सं. डब्ल्यू एम 21 (4) /94]

राजीव श्रीवास्तव, संयुक्त सचिव

MINISTRY OF CIVIL SUPPLIES, CONSUMER AFFAIRS, AND PUBLIC DISTRIBUTION

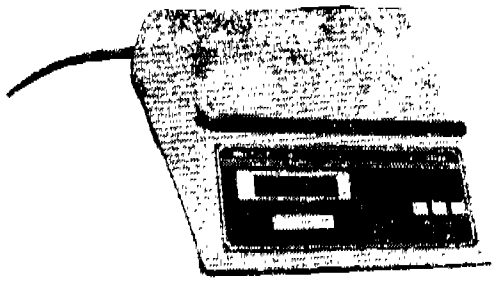
New Delhi, the 16th January, 1996

S.O. 291.—Whereas the Central Government, after considering the report submitted to it by the prescribed Authority, is satisfied that the Model described in the said report is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said model is likely to maintain accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by sub-sections (7) and (8) of Section 36 of the said Act, the Central Government hereby publishes the certificate of approval of Model of self-indicating non-automatic table top weighing instrument of type Smart scale 901 series with

trade name "Rite" of class III (herein referred to as the Model) manufactured by M/s. Encardio-rite Electronics Lucknow which is assigned the approval mark IND/09/95/13.

The Model (see figure) is a medium accuracy (accuracy class III) weighing instrument with a maximum capacity of 20 kilogram and minimum capacity of 100 gram. The verification scale interval (e) is 5 gram. It has a tare device with a 100 per cent subtractive retained tare effect. The base and the platform are metallic. The load receptor is of rectangle shape of sides 360×300 millimetre. The LED display indicates the weighing result. The instrument operates on 230 volts, 50 hertz alternate current power supply.



Further, the Central Government hereby declares that this certificate of approval of the Model shall also cover the weighing instrument of similar make, accuracy and performance of same series with maximum capacity of 2 kg., 5 kg., 10 kg. and 20 kg. manufactured by the same manufacturer in accordance with the same principle and with the same materials with which, the approved Model has been manufactured.

[F. No. WM-21 (4)/94]

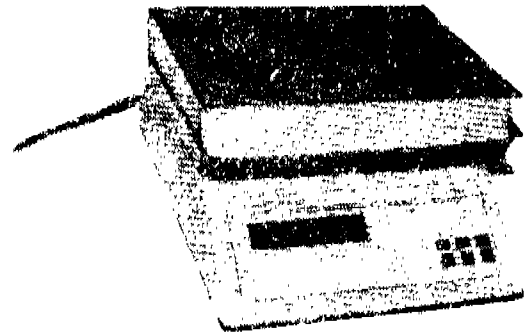
RAJIV SRIVASTAVA, Jt. Secy.

नई दिल्ली, 16 जनवरी, 1996

का. आ. 292—केन्द्रीय सरकार की विहित प्राधिकारी द्वारा उसे प्रस्तुत की गई रिपोर्ट पर विचार करने के पश्चात्, समाधान हो गया है कि उक्त रिपोर्ट में वर्णित माडल बाट और माप मानक अधिनियम 1976 (1976 का 60) और बाट और माप मानक (माडल का अनुमोदन नियम, 1987 के उपबंधों के अनुरूप है और इस बात की संभावना है कि उक्त माडल लगातार प्रयोग की अवधि में यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा देता रहेगा ।

अतः केन्द्रीय सरकार उक्त अधिनियम की धारा 36 की उपधारा (7) और उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए राइट ट्रेड नाम वर्ग 3 के स्मार्ट स्केल 901 सीरीज टाइप के स्वतः सूचक गैर स्वचालित टेबल टाप तोलन उपकरण के माडल का जिसे इसमें इसके पश्चात माडल कहा गया है । जिसका विनिमाप मैसर्स एनकडियो राइट इलेक्ट्रानिक्स लखनऊ द्वारा किया गया है जिसे अनुमोदन चिन्ह आई० एन० डी. (09-95-13) समनुदेशित किया गया है, अनुमोदन प्रमाण पत्र प्रकाशित करती है :—

माडल (आकृति देखिए) एक मध्यम यथार्थता (यथार्थता वर्ग 3) का तोलन उपकरण है जिसकी अधिकतम क्षमता 5 किलोग्राम और न्यूनतम क्षमता 20 ग्राम है। सत्यापन मापमान अन्तर (ई) 1 ग्राम है। इसमें एक टेयर युक्ति है जिसका व्यकलनात्मक प्रतिधारण टेयर प्रभाव 100 प्रतिशत है। आधार और प्लेटफार्म धात्विक है। भारग्राही आयताकार आकृति का है जिसके पार्श्व 360×300 मि. मी. है। प्रकाश उत्सर्जक डायोड परिणाम उपदर्शित करता है। यह उपकरण 230 वोल्ट, 50 हर्ट्ज के प्रत्यावर्ती धारा विद्युत प्रदाय पर प्रचालित होता है।



आगे, केन्द्रीय सरकार यह घोषणा करती है कि माडल के अनुमोदन के इस प्रमाण पत्र के अंतर्गत उसी विनिर्माता द्वारा इसी सिद्धान्त के अनुसार और उसी सामग्री से जिससे अनुमोदित साधित्र का विनिर्माण किया गया है विनिर्मित 2 किलोग्राम, 5 किलोग्राम, 10 किलोग्राम, 12 किलोग्राम और 20 किलोग्राम की अधिकतम क्षमता वाले समरूप मेक यथार्थता और उसी सिरीज के कार्यकरण वाले तोलन उपकरण भी है।

[फा. सं. डब्ल्यू एम 21 (1)/94]

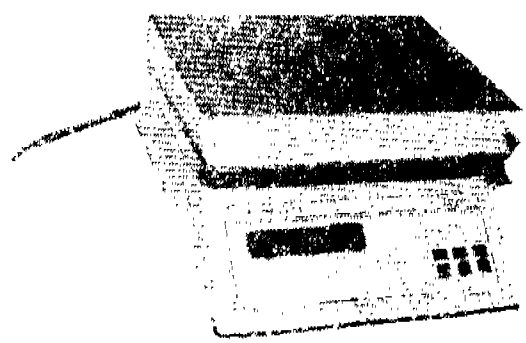
राजीव श्रीवास्तव, संयुक्त सचिव

New Delhi, the 16th January, 1996

S.O. 292.—Whereas the Central Government, after considering the report submitted to it by the prescribed Authority, is satisfied that the Model described in the said report is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said model is likely to maintain accuracy over periods of sustained use and to render accurate service under varied conditions ;

Now, therefore, in exercise of the powers conferred by sub-sections (7) and (8) of Section 36 of the said Act, the Central Government hereby publishes the certificate of approval of Model of self-indicating non-automatic table top weighing instrument of type Smart scale 901 series with trade name "Rite" of class III (herein referred to as the Model) manufactured by M/s. Encardio-rite Electronics Lucknow which is assigned the approval mark IND/09/95/13.

The Model (see figure) is a medium accuracy (accuracy class III) weighing instrument with a maximum capacity of 5 kilogram and minimum capacity of 20 gram. The verification scale interval (e) is 1 gram. It has a tare device with a 100 per cent subtractive retained tare effect. The base and the platform are metallic. The load receptor is of rectangle shape of sides 360×300 millimetre. The LED display indicates the weighing result. The instrument operates on 230 volts, 50 hertz alternate current power supply.



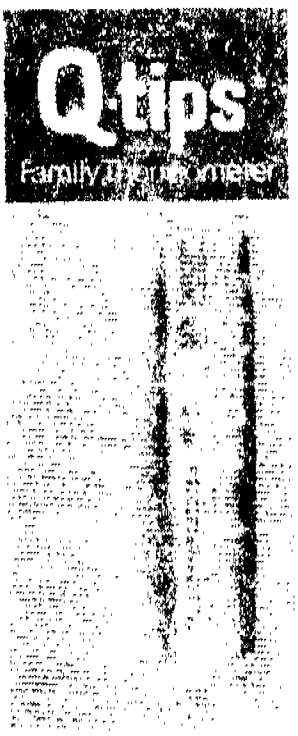
Further, the Central Government hereby declares that this certificate of approval of the Model shall also cover the weighing instrument of similar make, accuracy and performance of same series with maximum capacity of 3 kg, 6 kg, 10 kg, 12 kg and 30 kg manufactured by the same manufacturer in accordance with the same principle and with the same materials with which, the approved Model has been manufactured.

[F. No. WM-21 (4)/93]
RAJIV SRIVASTAVA, Jt. Secy.

नई दिल्ली, 17 जनवरी, 1996

का. आ. 293.—यतः केन्द्रीय सरकार को विहित प्राधिकारी द्वारा निवेदित रिपोर्ट पर विचार करने के पश्चात् समाधान हो जाता है कि उक्त रिपोर्ट में वर्णित मॉडल नीचे दी गई आकृति को देखें और माप मानक अधिनियम, 1976 (1976 का 60) और बाट और माप मानक मॉडलों का अनुमोदन (नियम, 1987 के उपबन्धों के अनुरूप है और इस बात की संभावना है कि उक्त मॉडल लगातार प्रयोग की अवधियों में यथार्थता बनाए रखेगी और विभिन्न परिस्थितियों में उपयुक्त सेवा देता रहेगा,

अतः अब केन्द्रीय सरकार उक्त अधिनियम की धारा 36 की उपधारा (7) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मैसर्स पोंड्स इंडिया लिमिटेड, थर्मामीटर प्रभाग, ईथीराज सलाई, मद्रास – 600105 द्वारा विनिर्मित टोस स्तंभ प्रकार के डाक्टरी थर्मामीटर के मॉडल जिसका ब्रांड नाम क्यू टिप्स टाईप के इलैक्ट्रानिक पंजिका संयोजन वाले योजक पद के मॉडल का (जिसे इसमें इसके पश्चात् मॉडल निर्दिष्ट किया गया है के अनुमोदन प्रमाणपत्र प्रकाशित करती है और उसे इंड/12/95/43 अनुमोदन चिह्न समनुदेशित किया गया है।)



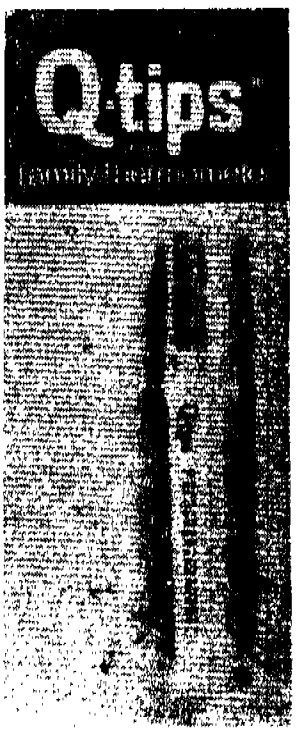
यह मॉडल (आकृति देखिए) पारे वाला डाक्टरी थर्मामीटर है जिसका अधिकतम अनुमापी पाठ्यांक 42 से. है और न्यूनतम अनुमापी पाठ्यांक 35 से. है। इसका सत्यापन अनुमापी अंतराल 0.1 से. है। अभिलिखित अधिकतम ताप का पठन अनुज्ञात करने के लिए केशिका में संकीर्णन का उपबंध है।

[फा. सं. डब्ल्यू एम 21/48/93]
राजीव श्रीवास्तव, संयुक्त सचिव

New Delhi, the 17th January, 1996

S.O. 293.—Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the Model described in the said report (see the figure given below) is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said Model is likely to maintain accuracy over periods of sustained use and to render accurate service under varied conditions ;

Now, therefore, in exercise of the powers conferred by sub-section (7) of Section 36 of the said Act, the Central Government hereby publishes the certificate of approval of the Model of the clinical thermometer of type solid stem and with brand name "Q-tips" (hereinafter referred to as the Model) manufactured by M/s Ponds (India) Ltd., Themometer Division, Ethiraj Salai, Madras-600105, and which is assigned the approval mark IND/12/95/43 ;



The Model (see figure) is a mercury-in-glass clinical thermometer with a maximum scale reading of 42°C and minimum scale reading of 35°C. The verification scale interval (e) is 0.1°C. It is provided with a constraction in the capillary to permit the reading of maximum temperature recorded.

[F. No. WM-21(48)/93]
RAJIV SRIVASTAVA, Jt. Secy.

मानव संसाधन विकास मंत्रालय

(महिला एवं बाल विकास विभाग)

नई दिल्ली, 18 जनवरी, 1996

का.आ. 294.—राष्ट्रीय महिला आयोग अधिनियम, 1990 (1990 का 20) की धारा 3 के अनुसरण में केन्द्रीय सरकार एतद्द्वारा निम्नलिखित को नामित करती है:—

1	श्रीमती पद्मा सेठ, सं. 13, महादेव रोड, नई दिल्ली।	सदस्य राष्ट्रीय महिला आयोग, नई दिल्ली।
2.	श्री टी.एन. श्रीवास्तव सी-II—76, शाहजहां रोड, नई दिल्ली।	सदस्य सचिव राष्ट्रीय महिला आयोग नई दिल्ली।

2. श्रीमती पद्मा सेठ, सदस्य का कार्यकाल 17-3-1997 तक होगा। श्री टी.एन. श्रीवास्तव 15-1-1996 से अगामी आदेश होने तक सदस्य सचिव के पद पर रहेंगे, किन्तु उनका कार्यकाल तीन वर्ष से अधिक नहीं होगा।

[सं. 9-21/94-डब्ल्यू डब्ल्यू]

ए. के. सिन्हा, संयुक्त सचिव

MINISTRY OF HUMAN RESOURCE DEVELOPMENT

(Department of Women & Child Development)

New Delhi, the 18th January, 1996

S.O. .—In pursuance of Section 3 of the National Commission for Women Act, 1990 (20 of 1990) the Central Government hereby nominates :

1	Smt. Padma Seth, No. 13, Mahadev Road, New Delhi.	—	Member, National Commission for Women, New Delhi.
2.	Shri T. N. Srivastava, J-II/76, Shahjahan Road, New Delhi.	—	Member-Secretary, National Commission for Women, New Delhi.

Smt. Padma Seth, Member shall hold office for the period upto 17-3-1997. Shri T. N. Srivastava shall hold the office of Member Secretary from the forenoon of 15-1-1996 until further orders but not exceeding three years.

[F. No. 9-21/94-WW]

A. K. SINHA, Joint Secy.

कोयला मंत्रालय

आदेश

नई दिल्ली, 15 जनवरी, 1996

का. आ. 295.—कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) की (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) धारा 9 की उपधारा (1) के अधीन निकाली गई भारत सरकार के कोयला मंत्रालय की अधिसूचना संख्यांक का. आ. 1055, तारीख 25 मार्च, 1994 के, भारत के राजपत्र, भाग II, खंड 3, उपखंड (ii), तारीख 7 मई, 1994 में प्रकाशित होने पर, उक्त अधिसूचना से संलग्न अनुसूची में वर्णित भूमि और भूमि में या उस पर के अधिकार (जिसे इसमें इसके पश्चात् उक्त भूमि कहा गया है) उक्त अधिनियम की धारा 10 की उपधारा (1) के अधीन, सभी विल्लंगमों से मुक्त होकर, आत्यंतिक रूप से केन्द्रीय सरकार में निहित हो गए थे,

और, केन्द्रीय सरकार का यह समाधान हो गया है कि साउथ ईस्टर्न कोलफील्ड्स लि., बिलासपुर (मध्य प्रदेश) सरकारी कंपनी (जिसे इसमें इसके पश्चात् उक्त कंपनी कहा गया है), ऐसे निबंधनों और शर्तों का, जो केन्द्रीय सरकार इस निमित्त अधिरोपित करना उचित समझे, अनुपालन करने के लिए रजामंद है,

अतः अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 11 की उपधारा (i) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निर्देश देती है कि उक्त प्रकार निहित उक्त भूमि और उक्त भूमि में या उस पर के अधिकार, तारीख 7 मई, 1994 से केन्द्रीय सरकार में इस प्रकार निहित बने रहने की बजाय, निम्नलिखित निबंधनों और शर्तों के अधीन रहते हुए, उक्त कंपनी में निहित हो जाएंगे, अर्थात् :—

(1) उक्त कंपनी, उक्त अधिनियम के उपबंधों के अधीन अवधारित प्रतिकर, ब्याज, नुकसानी और वसीयती मदों की बाबत किए गए सभी संदायों की केन्द्रीय सरकार को प्रतिपूर्ति करेगी;

(2) उक्त कंपनी द्वारा शर्त (1) के अधीन, केन्द्रीय सरकार को संदेय रकमों का अवधारण करने के प्रयोजन के लिए एक अधिकरण का गठन किया जाएगा तथा ऐसे किसी अधिकरण और ऐसे अधिकरण की सहायता के लिए नियुक्त व्यक्तियों के संबंध में उपगत सभी व्यय, उक्त कंपनी वहन करेगी और इसी प्रकार, इस प्रकार निहित उक्त भूमि में या उस पर के अधिकारों के लिए या उनके संबंध में सभी विधिक कार्यवाहियों, जैसे अपील आदि की बाबत उपगत सभी व्यय भी, उक्त कंपनी वहन करेगी;

(3) उक्त कंपनी, केन्द्रीय सरकार या उसके पदधारियों की, ऐसे किसी अन्य व्यय के संबंध में, जो इस प्रकार निहित उक्त भूमि में या उस पर के अधिकारों के बारे में केन्द्रीय सरकार या उसके पदधारियों द्वारा या उनके विरुद्ध किन्हीं कार्यवाहियों के संबंध में आवश्यक हो, क्षतिपूर्ति करेगी।

(4) उक्त कंपनी को, केन्द्रीय सरकार के पूर्व अनुमोदन के बिना, उक्त भूमि को किसी अन्य व्यक्ति को अंतरित करने की शक्ति नहीं होगी; और

(5) उक्त कंपनी, ऐसे निदेशों और शर्तों का, जो केन्द्रीय सरकार द्वारा, जब कभी आवश्यक हो, उक्त भूमि के विशिष्ट क्षेत्रों के लिए दिए जाएं या अधिरोपित की जाएं, पालन करेगी।

[फा. सं. 43015/18/90-एल.एस. डब्ल्यू.]

पी. के. जी. नायर, अवर सचिव

MINISTRY OF COAL

ORDER

New Delhi, the 15th January, 1996

S.O. 295.—Whereas on the publication of the notification of the Government of India in the Ministry of Coal number S.C. 1055 dated the 25th March, 1994 in the Gazette of India, Part II, Section 3, Sub-section (ii), dated the 7th May, 1994, issued under sub-section (1) of section 9 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), the land and rights in or over the lands described in the Schedule appended to the said notification (hereinafter referred to as the said lands) vested absolutely in the

Central Government free from all encumbrances under sub-section (1) of section 10 of the said Act.

And whereas the Central Government is satisfied that the South Eastern Coalfields Limited Bilaspur (Madhya Pradesh) (hereinafter referred to as the said Company), a Government Company, is willing to comply with such terms and conditions as the Central Government thinks fit to impose in this behalf.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 11 of the said Act, the Central Government hereby directs that the said lands and rights in or over the said lands so vested shall, with effect from 7th May, 1994, instead of continuing to so vest in the Central Government, vest in the said Company, subject to the following terms and conditions, namely:—

1. the said company shall reimburse the Central Government all payments made in respect of compensation, interest, damages and the like, as determined under the provisions of the said Act;

2. a tribunal shall be constituted for the purpose of determining the amounts payable to the Central Government by the said Company under condition (1), and all expenditure incurred in connection with any such tribunal and persons appointed to assist the tribunal shall be borne by the said Company and similearly all expenditure incurred in respect of all legal proceedings like apl-peals etc. for o rin connection with the rights in or over the said lands, so vesting shall also be borne by the said Company.

3. the said company shall indemnify the Central Government or its Official against any other expenditure that may be necessary in connection with any proceedings by or against the Central Government or its Officials regarding the rights in or over the said lands as vesting;

4. the said company shall have no power to transfer the said lands to any other person without the previous approval of the Central Government, and

5. the said company shall abide by such directions and conditions as may be given or imposed by the Central Govern-person without the previous approval ment for particular areas of the said lands, as and when necessary.

[No. 43015|18|90-LSW]

P. K. G. NAIR, Under Secy.

नई दिल्ली, 17 जनवरी, 1995

का. आ. ----296------केन्द्रीय सरकार को यह प्रतीत होता है कि इससे उपाबद्ध अनुसूची में उल्लिखित भूमि में कोयला अभिप्राप्त किए जाने की संभावना है, अत : अब, केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957(1957 का 20) की (जिसे इसमें इसके पश्चात उक्त अधिनियम कहा गया है) की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उस क्षेत्र में कोयले का पूर्वेक्षण करने के अपने आशय की सूचना देती है ;

इस अधिसूचना के अंतर्गत आने वाले क्षेत्र रेखाक सं. एस. ई. सी. एल./बी एसपी./जी एम. (पी एल जी)भूमि 148, तारीख 8 जून, 1995 का निरीक्षण कलक्टर, रायगढ़ (मध्य प्रदेश) के कार्यालय में या कोयला नियंत्रक 1 काउंसिल हाउस स्ट्रीट, कलकत्ता-700001 के कार्यालय में या साउथ ईस्टर्न कोलफील्डस लि., राजस्व विभाग, सीपत रोड, बिलासपुर-495006 (मध्य प्रदेश) के कार्यालय में किया जा सकता है।

इस अधिसूचना के अंतर्गत आने वाली भूमि में हितबद्ध सभी व्यक्ति उक्त अधिनियम की धारा 13 की उपधारा (7) में निर्दिष्ट सभी नक्शों चार्टों और अन्य दस्तावेजों को, इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से नब्बे दिन के भीतर विभागाध्यक्ष (राजस्व) साउथ ईस्टर्न कोलफील्डस लि., सीपत रोड, बिलासपुर-495006 (मध्य प्रदेश) को भेजेंगे।

अनुसूची

कुडुमकेला खंड (भाग 2)

मांड रायगढ़ कोयला क्षेत्र

जिला रायगढ़ (मध्य प्रदेश)

रेखांक सं. एस. ई सी एल /बी एस पी/ जी एस (पी एल जी)/लैंड/148, तारीख 8 जून, 1995

(पूर्वेक्षण के लिए अधिसूचित भूमि दर्शाते हुए)

क्रम संख्या	ग्राम का नाम	पटवारी हल्का संख्यांक	तहसील	जिला	हैक्टर में क्षेत्र	टिप्पणियां
1.	कुडुमकेला	17	घरघोडा	रायगढ़	3162.221	पूर्ण
2.	कोसमघाट	17	घरघोडा	रायगढ़	451.772	पूर्ण
3.	पुसलदा	16	घरघोडा	रायगढ़	1490.231	पूर्ण
4.	पुरी	17	घरघोडा	रायगढ़	749.476	पूर्ण
5.	घोगडा	17	घरघोडा	रायगढ़	094.963	पूर्ण
					5948.663 हैक्टर लगभग या 14699.146 एकड़ (लगभग)	

सीमा वर्णन

क–ख–ग रेखा, आरक्षित वन और पुरी ग्राम की सम्मिलित सीमाओं के बिन्दु "क" से आरंभ होती है तथा ग्राम पुरी, कोसमघाट, पुसलदा की उत्तरी सीमाओं के साथ-साथ जाती है और बिन्दु "ग" पर मिलती है।

ग–घ रेखा, ग्राम पुसलदा, कुडुमकेला की पूर्वी सीमा के साथ-साथ जाती है और बिन्दु "घ" पर मिलती है।

घ–ङ रेखा, ग्राम कुडुमकेला की दक्षिणी जिला के साथ-साथ जाती है और बिन्दु "ङ" पर मिलती है।

ङ–च रेखा, ग्राम कुडुमकेला की पश्चिमी सीमा के साथ-साथ जाती है और बिन्दु "च" पर मिलती है।

च–छ–क रेखा दक्षिणी सीमा के साथ-साथ फिर ग्राम पुरी की पश्चिमी सीमा के साथ-साथ जाती है और आरंभिक बिन्दु "क" पर मिलती है।

[फा. सं. 43015/12/95-एल. एस. डब्ल्यू.]

पी. के. जी. नायर, अवर सचिव

New Delhi, the 17th January, 1996

S.O. 296:—Whereas it appears to the Central Government that Coal is likely to be obtained from the lands mentioned in the Schedule hereto annexed;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) hereinafter referred to as the said Act) the Central Government hereby gives notice of its intention to prospect for coal therein.

The plan bearing No. SECL/BSP/GM (PLG)/Land/148, dated 8th June, 1995 of the area covered by this notification may be inspected in the Office of the Collector, Raigarh, (Madhya Pradesh) or in the Office of the Co Controller, 1, Council House Street, Calcutta-700001 or in the Office of the South Eastern Coalfields Limited (Revenue Section), Seepet Road, Bilaspur-495 006 Madhya Pradesh.

All persons interested in the land covered by this notification shall deliver all maps, charts and other documents referred to in sub-section (7) of section 13 of the said Act to the Head of the Department Revenue), South Eastli Coalfields Limited, Seepat Road, Bilaspur- 495006 (Madhya Pradesh) within ninety days from the date of publication of this notification in the official Gazette.

SCHEDULE

KURUMKELA BLOCK (PART-II)

MAND RAIGL COAFIELDS

DISTRICT-RAIGARH (MADHYA PRADESH)

(Plan No.: SECL/BSP/GM(PLG)Land/148
Dated: 8th June, 1995.
(Showing the land notified for prospection)

Serial Number	Name of Village	Patwari Halka number	Tahsil	District	Area in hectares	Remarks
1.	Kudumkela	17	Gharghoda	Raigarh	3162.221	Full
2.	Kosumghat	17	Gharghoda	Raigarh	451.772	Full
3.	Pusalda	16	Gh?gghoa	Raigarh	1490.231	Full
4.	Puri	17	Gharghoda	Raigarh	749.476	Full
5.	Ghogra	17	Gharghoda	Raigarh	0.94.963	Full
					5,948.663 Hectares	
				TOTAL:	(Approximately) OR 14,699.146 Acres (Approximately)	

Boundary description :—

A–B–C–	Line starts from point "A' on the common boundaries of Reserved Forest and village Puri and passes laong the Northern boundaries of Villages Puri, Kosumghat, Pusalda and meetsat Point"C".
C–D–	Line passes along the Eastern Boundary of villages Pusalda Kudum Kela and meets at Point "D".
D–E	Line passes along the Southern boundary of village Kudumkela and meets at Point "E"
E–F	Line passes along the Western Boundary, of village Kudumkela and meets at Point "F".
F–G–A	Line passes along the Southern Boundary, then western Boundary of village Puri and meets at the starting point "A"

[No. 430 15/12/95—LSW]

P. K.G. NAIR Under Secy.

पैट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 16 अक्तूबर, 1995

का. आ. 297——तरलीकृत पेट्रोलियम गैस (आपूर्ति और वितरण का विनियमन) आदेश, 1993 के पैरा 13 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार जनता द्वारा अनुभव की जा रही कठिनाइयों का विचार करते हुए मे. जय सिलेंडर्स लिमिटेड जिनका पंजीकृत कार्यालय 206, साउथ एक्स प्लाजा, 389, मस्जिद मोठ साऊथ एक्सटेंशन पार्ट-II, नई दिल्ली में है, को निम्नलिखित शर्तों के अधीन 314 मि. मी. ± 3 मि. मी. व्यास के 19 लीटर ± 1 लीटर जल की क्षमता वाले 10,000 (दस हजार) अवशिष्ट तरलीकृत हाईड्रोकार्बन गैस (आर. एल. एच. जी.) सिलेंडरों के प्रयोग के संबंध में इन्हें एल पी जी सिलेन्डरों के रूप में प्रयोग करने के लिए उक्त आदेश की अनुसूची "क" के उपबंधों से छूट देती है अर्थात्——

(1) इन सिलेंडरों के साथ लगाए गए वाल्वों का आकार 25.6 ± 3 मि. मी० आकार के अतिरिक्त भीतरी व्यास के अनुरूप होगा।

(2) यह छूट इस अधिसूचना के जारी होने की तिथि से पांच वर्ष तक की अवधि के लिए वैध रहेगी, बशर्ते पहले नवीकरण/रद्द न करवाया जाए।

[फाईल सं. पी. 45012/18/94 विपणन]

ओ० एन. सिंह, उप सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 16th October, 1995

S.O. 297.—In exercise of the powers confered by Clause 13 of the Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 1993, the Central Government in consideration of the hardship experienced by the public to obtain supply of Liquefied Petroleum Gas (LPG) cylinders, hereby exempts M/s. Jay Cylinders Limited, registered office at 206, South-Ex Plaza, 389, Masjid Moth, South Extension Part-II, New Delhi from the provisions of Schedule 'A' to the said Order with respect to the use of 10,000 (Ten thousand) Residual Liquefied Hydrocarbon Gas (RLHG) cylinders of 19 litre + 1 litre water capacity with a diameter of 314 mm + 3 mm. to use the same as LPG cylinders, subject to the following conditions, namely :—

(1) the size of the valves fitted to these cylinders shall conform to other then inlet diameter of 25.6 + 3 mm size ;

(2) the exemption shall be valid for a period of five years from the date of issue of this notification unles renewed/cancelled earlier

[File No. P-45012/18/94-MKT]

O. N. SINGH, Dy. Secy.

नई दिल्ली, 12 जनवरी, 1996

का. आ. 298—केन्द्रीय सरकार, पैट्रोलियम और खनिज पाइप लाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 2 के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, श्री ए. वी. कलारिया, उप कलक्टर, भारत ओमान रिफाइनरीज लिमिटेड की सेंट्रल इंडिया रिफाइनरी परियोजना के गुजरात राज्य के राज्यक्षेत्र के भीतर उक्त अधिनियम के अधीन सक्षम प्राधिकारी के कृत्यों का पालन करने के लिए प्राधिकृत करती है।

[फा. सं. आर-31015/21/95-ओ आर-II]

के. सी. कटोच, अवर सचिव

New Delhi, the 12th the January, 1996

S.O. 298.—In exercise of the powers conferred by clause (a) of section 2 of the Petroleum & Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby authorises Shri A. V. Kalaria, Dy. Collector in respect of Central India Refinery Project of Bharat Oman Refineries Limited within the territory of State of Gujarat, the functions of the competent authority under the said Act.

[File No. R-31015/21/95-IR-II]

K. C. KATOCH, Under Secy.

विद्युत मंत्रालय

नई दिल्ली, 29 दिसम्बर, 1995

का. आ. 299—सार्वजनिक स्थान (अप्राधिकृत अधिभोगियों की बेदखली) अधिनियम, 1971 (1971 का 40 वां) की धारा-3 के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्द्वारा नीचे दी गई तालिका के कालम (1) में उल्लिखित एक सांविधिक प्राधिकरण, राष्ट्रीय ताप विद्युत निगम लि. के अधिकारी, जो कि भारत सरकार के राजपत्रित अधिकारी के समकक्ष है, को कथित अधिनियम के प्रयोजनों के लिए सम्पदा अधिकारी नियुक्त करती है, जो उल्लिखित तालिका के कालम 2 में संबंधित प्रविष्टि में निर्दिष्ट सार्वजनिक स्थानों की श्रेणियों के बारे में अपने अधिकार क्षेत्र की स्थानीय सीमाओं के अन्तर्गत कथित अधिनियम के द्वारा अथवा उसके अन्तर्गत सम्पदा अधिकारी को प्रदत्त की गई शक्तियों का उपयोग कर सकेगा और सम्पदा अधिकारी को सौंपे गए कर्तव्यों का पालन करेगा।

तालिका

अधिकारी का नाम तथा पदनाम	सार्वजनिक स्थानों की श्रेणियां तथा क्षेत्राधिकार की स्थानीय सीमाएं
श्री राकेश प्रसाद उप प्रबन्धक (कार्मिक एवं प्रशासन) कहलगांव सुपर ताप विद्युत परियोजना बिहार	ईस्टर्नजोन (पी ओ.), जिला भागलपुर कहलगांव—813203, बिहार अवस्थित राष्ट्रीय ताप विद्युत निगम लिमिटेड की कहलगांव सुपर ताप विद्युत परियोजना के स्वामित्व वाले अथवा उसमें समर्पित अथवा उसके द्वारा पीछे पर लिए गए और किराए पर लिए गए सभी परिसर, भवन, सम्पदा, परिसम्पत्तियां तथा अन्य आवास ।

[सं.—8/6/92—यूएस (सीटी)]

शंभु चन्द्र, अवर सचिव

MINISTRY OF POWER

New Delhi, the 29th December, 1995

S.O. 299.—In exercise of the powers conferred by Section of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1971), the Central Government hereby appoints the offices mentioned in column (1) of the table below, being an officer of the National Thermal Power Corporation, a statutory authority, and equivalent to the rank of a Gazetted Officer of the Government of India to the an estate officer for the purpose of the Act, who shall exercise the powers conferred, and perform the duties imposed on an estate officer by or under the said Act within the local limits of his jurisdiction in respect of the categories of public premises specified in the corresponding entry in column (2) of the said table.

TABLE

Name and Designation of the Officer	Categories of Public Premises and Local limits of Jurisdiction
(1)	(2)
Shri Rakesh Prasad Deputy Manager (Personnel & Administration) Khalgaon Super Thermal Power Project, Bihar	All premises, quarters, estates, properties and other accommodation owned or belonging to, or leased and rented by Khalgaon Super Thermal Power Project of National Thermal Power Corporation Limited located at (P.O.) Deeptinagar District Bhagal pur) Khalgaon 813203, Bihar.

[No. 8/6/92-US(CT)]

RAMESH CHANDER, Under Secy.

संस्कृति विभाग

भारतीय पुरातत्व सर्वेक्षण

नई दिल्ली, 19 जनवरी, 1996

(पुरातत्व)

का. आ. 300.—केन्द्रीय सरकार की यह राय है कि इससे उपाबद्ध अनुसूची में विनिर्दिष्ट प्राचीन संस्मारक राष्ट्रीय महत्व का है,

अतः, अब, केन्द्रीय सरकार प्राचीन संस्मारक तथा पुरातत्वीय स्थल और अवशेष अधिनियम 1958 (1958 का 24) की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त प्राचीन संस्मारक को राष्ट्रीय महत्व का घोषित करने के अपने आशय की दो मास की सूचना देती है।

केन्द्रीय सरकार इस अधिसूचना के राजपत्र में जारी करने की तारीख से दो मास की अवधि के भीतर उक्त प्राचीन संस्मारक में हितबद्ध किसी व्यक्ति से प्राप्त किसी आक्षेप पर विचार करेगी, आक्षेप, महानिदेशक, भारतीय पुरातत्व सर्वेक्षण, जनपथ नई दिल्ली 110011 को भेजे जा सकेंगे

अनुसूची

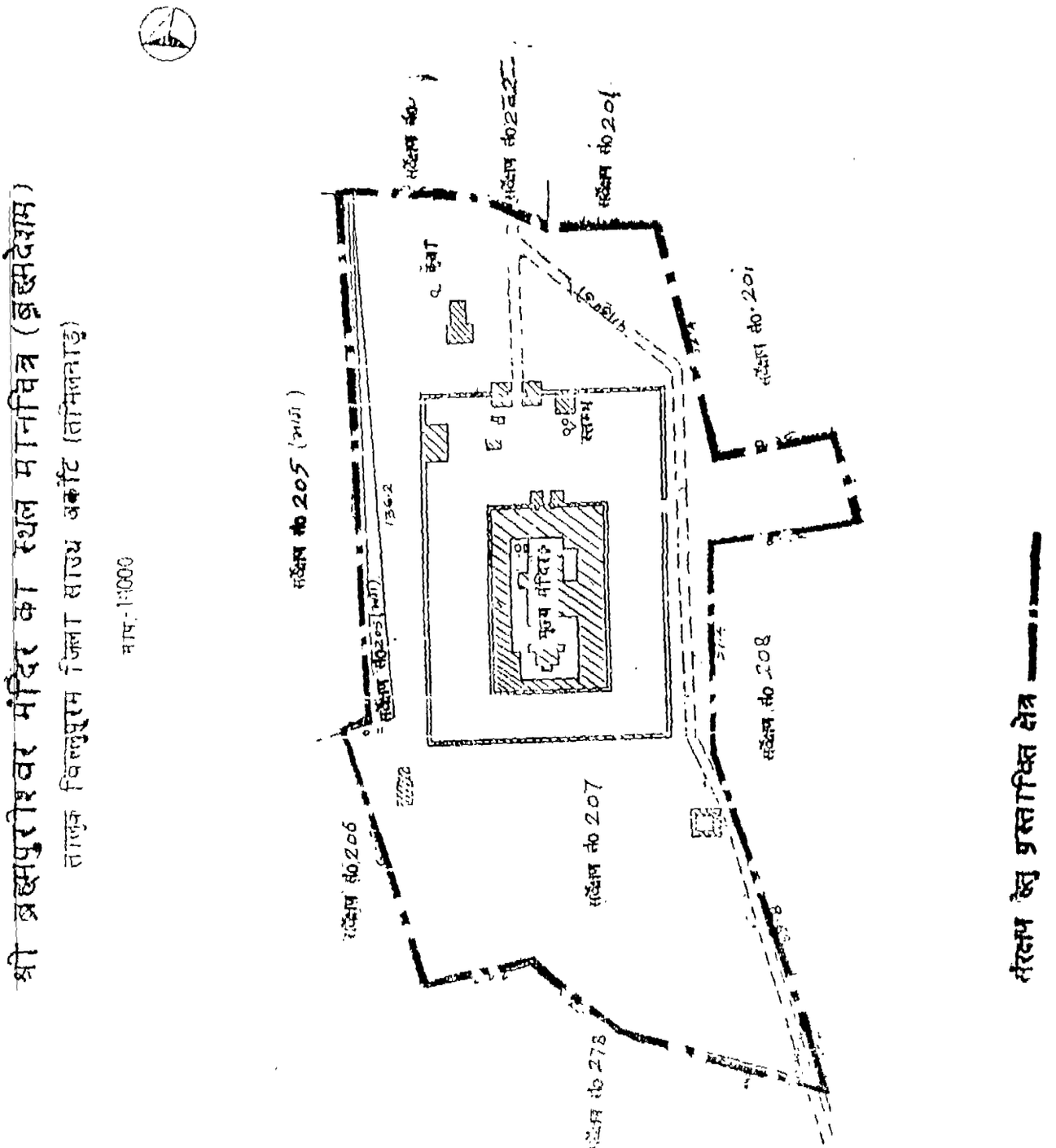
क्रम सं.	संस्मारक का नाम	परिक्षेत्र	तालुक	जिला	संरक्षण के लिए शामिल किए जाने वाली सर्वेक्षण संख्या	क्षेत्र	सीमाएं	स्वामित्व	टिप्पणियां
1	2	3	4	5	6	7	8	9	10
1.	श्री ब्रह्मपुरीश्वर मंदिर	ब्रह्मदेशम्	तिरुपुरम्	दक्षिण आर्कोट	सर्वेक्षण संख्यांक 207 संपूर्ण समिलनाडु सर्वेक्षण संख्या 205 (भाग)	1.62.5 0.03.0	उत्तर: सर्वेक्षण संख्या 206 205 भाग पूर्व : सर्वेक्षण संख्या 203, 202 भाग निजी और 201 दक्षिण : सर्वेक्षण संख्या 201 और 208 पश्चिम : सर्वेक्षण संख्या 278	सर्वेक्षण संख्या 207 मंदिर भूमि सर्वेक्षण संख्या 205	मंदिर में पूजा होती है।

योग—

1655 हेक्टर

या

4.08 एकड़



[फा. सं. 2/28/89एम (ए)

बाल्मीकि प्रसाद सिंह, महानिदेशक

DEPARTMENT OF CULTURE

(Archaeological Survey of India)

New Delhi, the 19th January, 1996

(ARCHAEOLOGY)

S.O. 300 .— Whereas the Central Government is of opinion that the ancient monument specified in the Schedule annexed hereto is of national importance;

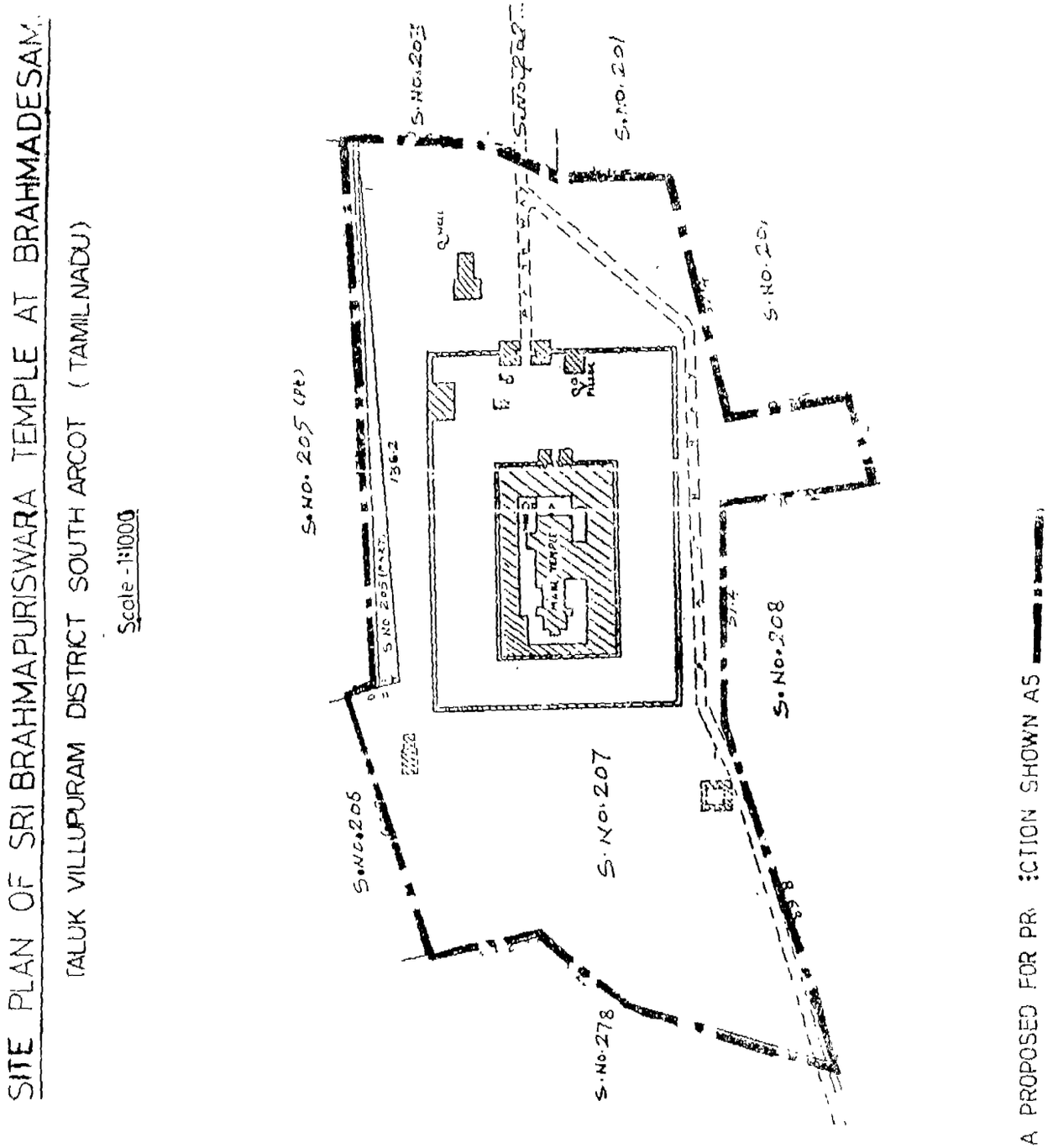
Now, therefore, in exercise of the powers conferred by sub-section (1) of section 4 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958), the Central Government hereby gives two months' notice of its intention to declare the said ancient monument to be of national importance.

Any objection which may be received within a period of two months from the date of issue of this notification in the official Gazette from any person interested in the said ancient monument will be taken into consideration by the Central Government. The objection may be addressed to the Director General, Archaeological Survey of India, Janpath, New Delhi-110011.

SCHEDULE

S. No.	Name of the Monument	Locality	Taluk	District	Survey Number to be included under protection
1	2	3	4	5	6
1.	Sri Brahmapuriswara Temple	Brahmadesam	Villupuram	South Arcot (Tamil Nadu)	Survey Number 207 (Complete) Survey Number 205 (Part)

Area	Boundaries	Ownership	Remarks
7	8	9	10
1.62.5 0.03.0	North : Survey Numbers 206 and 205 Part East : Survey Numbers 203, 202 and 201 South : Survey Numbers 201 and 208 West : Survey Number 278	Survey Number 207 Temple land. Survey 205 Part Private	Temple is under worship.
1.65.5 Hectares or 4.08 Acres			



[F.No. 2/28/89–M(A)]
B. P. SINGH, Director General

नई दिल्ली, 19 जनवरी, 1996

(पुरातत्व)

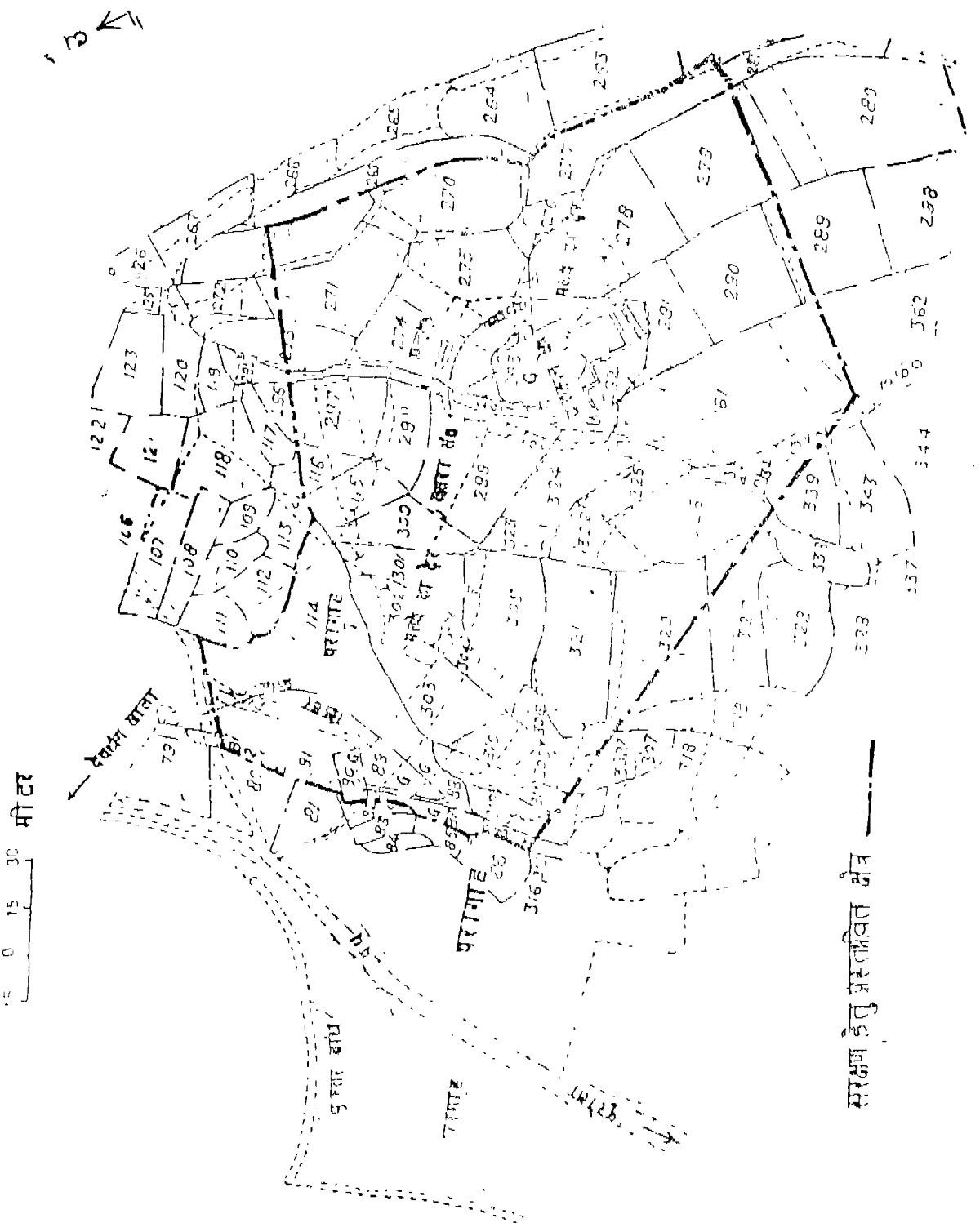
का. आ. 301 .—केन्द्रीय सरकार की यह राय है कि इससे उपाबद्ध अनुसूची में विनिर्दिष्ट प्राचीन संस्मारक राष्ट्रीय महत्व का है ; अतः अब, केन्द्रीय सरकार, प्राचीन संस्मारक तथा पुरातत्वीय स्थल और अवशेष अधिनियम, 1958 (1953 का 24) की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त प्राचीन संस्मारक को राष्ट्रीय महत्व का घोषित करने के अपने आशय की दो मास की सूचना देती है ।

केन्द्रीय सरकार इस प्रकार दो मास की अवधि के भीतर उक्त प्राचीन संस्मारक में हितबद्ध किसी व्यक्ति से प्राप्त किसी आक्षेप पर विचार करेगी । आक्षेप महानिदेशक, भारतीय पुरातत्व सर्वेक्षण, जनपथ, नई दिल्ली 110011, को भेजे जा सकेंगे ।

अनुसूची

राज्य	जिला	परिक्षेत्र	संस्मारक स्थलकानाम	संरक्षण के लिए शामिल किए जाने वाले राजस्व प्लाट संख्या	क्षेत्र	सीमाएं	स्वामित्व	टिप्पणी
1	2	3	4	5	6	7	8	9
उत्तर प्रदेश	उत्तर काशी	गांव खवलीसेरा (पुरोला केसमीप)	प्राचीन स्थल और अवशेष	खसरा सं 87,90,91, 115,270,274,275,276 277,278,280,291,292 293,294,297,298,299, 300,301,302,303,304,	हेक्टर	उत्तर:—खसरा सं 80,81,82, 83,85,86,111, 112,113,117, 296,295, और खसरा संख्या 88, 89,92,114,116 271,273, और 268 का शेष भाग	खसरा सं 87 भाग, 88भाग,89भाग,90, 92,114,293,294, और313सरकार और शेष निजी स्वामित्व में है	
				305,306,309,310,321 322,323,324,325,		पूर्व खसरा संख्या 262,263,264,और 269		
				326,340,341,361 और खसरा संख्या 88,89, 92,114,116,268, 271, 273		दक्षिण खसरा संख्या 281और 375 और खसरा संख्या 279,289 और 362 का शेष भाग		
				279,289,308,311, 312,313, 320,327, 339,342और362 का शेष भाग		पश्चिम खसरा संख्या: 307, 315,319, 338, 343, 360 और खसरा सं. 308, 311, 312, 313, 320 327, 339और 342 का शेष भाग ।		

प्रावीन उत्खनन क्षेत्र का स्थल मानचित्र, खावली सैरा, तहसील पुरोला, जिला उत्तरकाशी (उत्तर प्रदेश)



[फा. सं. 2/35/88 एम.]

बाल्मीकि प्रसाद सिंह, महानिदेशक

New Delhi, the 19 January, 1996

(ARCHAEOLOGY)

S.O. 301 .— Whereas the Central Government is of the opinion that the ancient monument specified in the Schedule annexed hereto is of national importance.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 4 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958), the Central Government hereby gives two months notice of its intention to declare the said ancient monument to be of national importance.

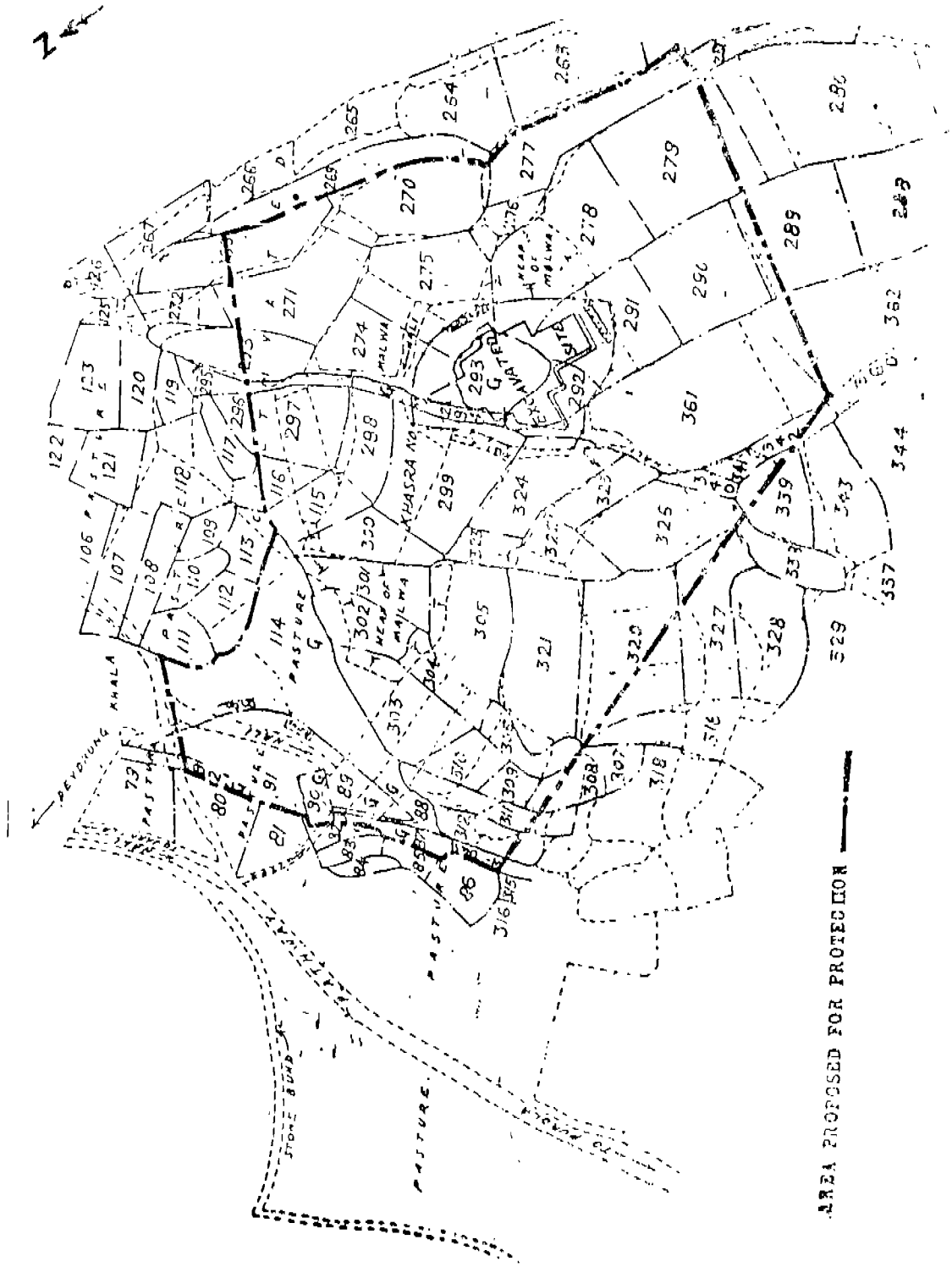
Any objection which may be received within a period of two months from the date of issue of this notification in the official Gazette from any person interested in the said adcient mounment will be taken into consideration by the Central Government. The objection may be addressed to the Director General, Archaeological Survey of India, Janpath, New Delhi-110011.

SCHEDULE

State	District	Locality	Name of Monument/ Site	Revenue plot numbers to be included under protection
1	2	3	4	5
Uttar Pradesh	Uttar Kashi	Village Khawli Sera (near Purela)	Ancient Excavated Site and Ramains	Khasra Numbers 87, 90, 91, 115, 270, 274, 275, 276, 277, 278, 290, 291, 292, 293, 294, 297, 298, 299, 300, 301, 302, 303, 304. 305, 306, 309, 310, 321, 322, 323, 324, 325, 326, 340, 341, 361, and part of Kharsa Numbers 88 89, 92, 114, 116, 268, 271, 273, 279, 289, 308, 311, 312, 313, 320, 327, 339, 342 and 362 as

Area	Boundaries	Ownership	Remarks
6	7	8	9
0.663 Hectare	North : Khasra Numbers 80, 81, 82, 83, 85, 86, 111, 112, 113, 117, 296, 295 and remaining parts of Khasra Numbers 88, 89, 92, 114, 1161, 271, 273, and 268. East : Khasra Numbers 262, 263, 264 and 269. South: Khasra Numbers 281, 375 and remaining part of Khasra Numbers 279, 289 and 362. West: Khasra Numbers 307, 315, 319, 338, 343, 360 and remaining part of Khasra Numbers 308, 311, 312, 313, 320 327, 339 and 342.	Khasra Numbers 87, 88 Part, 89 Part, 90, 92, 114, 293, 294 and 313 Government and remaining are under private ownership.	

SITE PLAN OF ANCIENT EXCAVATED SITE AT KHAWLI SERA, TEHSIL PUROLA, DISTRICT UTTARKASHI (UTTAR PRADESH)



[F.No. 2/35/88-M]
B.P. SINGH, Director General

नई दिल्ली, 19 जनवरी, 1996

(पुरातत्व)

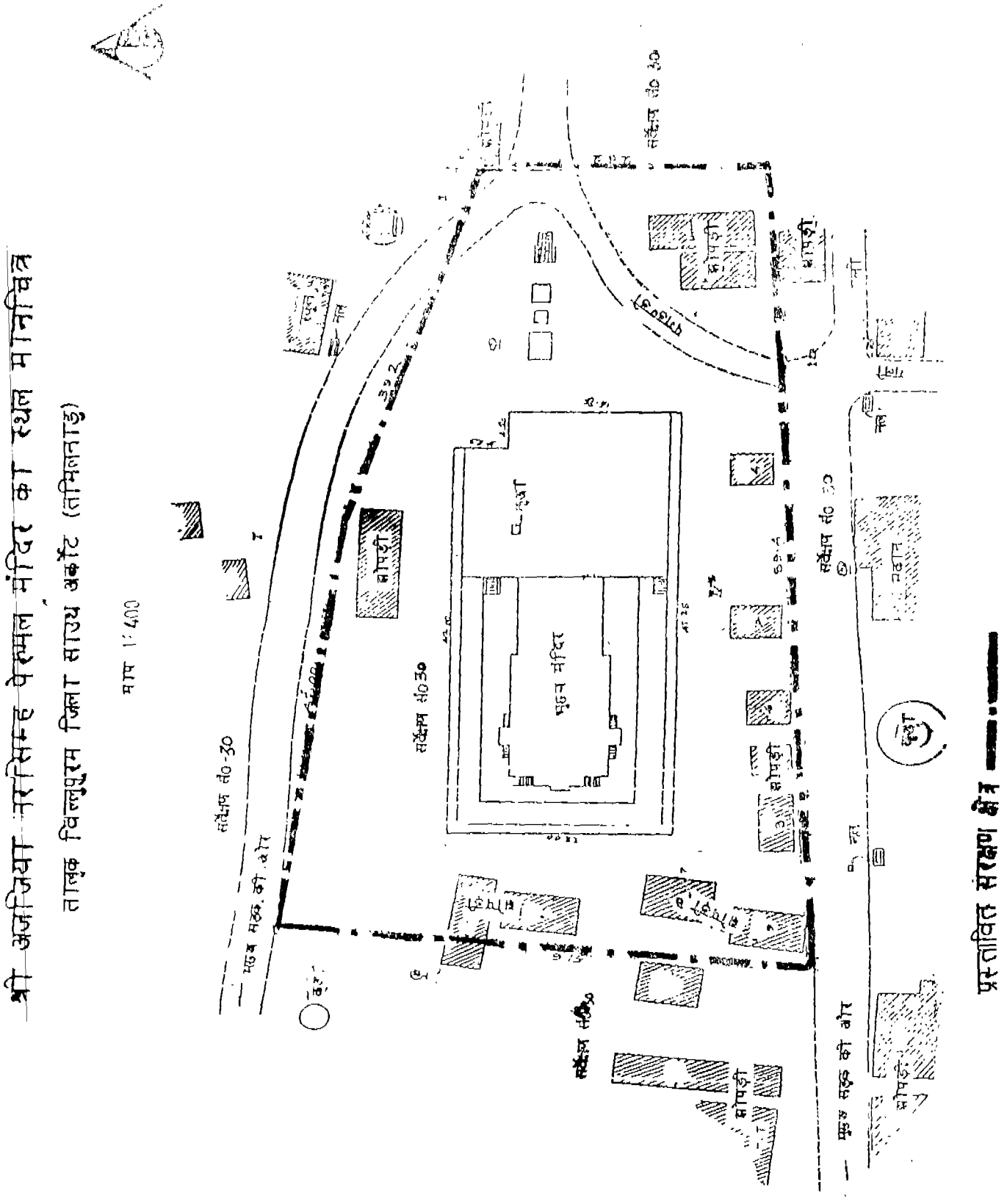
का. आ. 302.—केंद्रीय सरकार की यह राय है कि इससे उपाबद्ध अनुसूची में विनिर्दिष्ट प्राचीन संस्मारक राष्ट्रीय महत्व का है;

अतः अब, केन्द्रीय सरकार, प्राचीन संस्मारक तथा पुरातत्वीय स्थल और अवशेष अधिनियम, 1958 (1958 का 24) की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त प्राचीन संस्मारक को राष्ट्रीय महत्व का घोषित करने के अपने आशय की दो मास की सूचना देती है।

केन्द्रीय सरकार इस प्रकार दो मास की अवधि के भीतर उक्त प्राचीन संस्मारक में हितबद्ध किसी व्यक्ति से प्राप्त किसी आक्षेप पर विचार करेगी। आक्षेप महानिदेशक, भारतीय पुरातत्व सर्वेक्षण, जनपथ, नईदिल्ली-110011, को भेजे जा सकेंगे

अनुसूची

क्रम सं.	संस्मारक का नाम	परिक्षेत्र	तालुक	जिला	संस्मारक के लिए शामिल किए जाने वाली सर्वेक्षण संख्या	क्षेत्र	सीमाएं	स्वामित्व	टिप्पणियां
1	2	3	4	5	6	7	8	9	10
1.	श्री अजागिया नरसिंह पूक्कमल मंदिर	इन्नयीरम	विल्लुपुरम	दक्षिण अर्काट तमिलनाडु	सर्वेक्षण संख्या 30 भाग	0.35.5 हेक्टर या 0.87 एकड़	उत्तर : सर्वेक्षण सं. 30 गली पूर्व : सर्वेक्षण सं. 30 दक्षिण : सर्वेक्षण सं. 30 गली पश्चिम : सर्वेक्षण सं. 30	नाथम	मंदिर में पूजा होती है।



[फा.सं. 2/28/89—एस (बी)]

बाल्मीकि प्रसाद सिंह, महानिदेशक

New Delhi, the 19th January, 1996

(ARCHAEOLOGY)

S.O. 302.— Whereas the Central Government is of opinion that the ancient monument specified in the Schedule annexed hereto is of national importance;

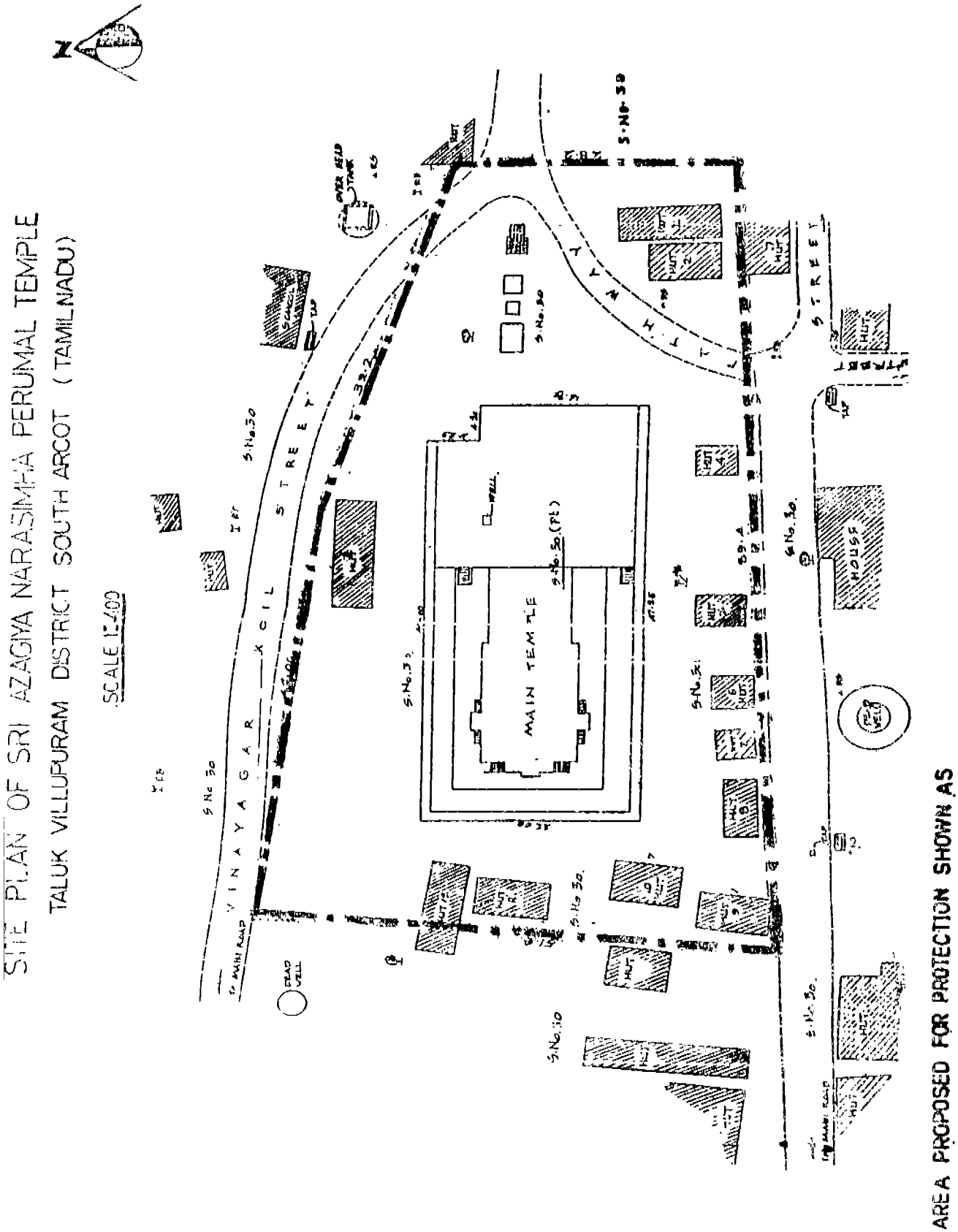
Now, therefore, in exercise of the powers conferred by sub-section (1) of section 4 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958), the Central Government hereby gives two months notice of its intention to declare the said ancient monument to be of national importance.

Any objection which may be received within a period of two months from the date of issue of this notification in the official Gazette from any person interested in the said ancient monument will be taken into consideration by the Central Government. The objection may be addressed to the Director General, Archaeological Survey of India, Janpath, New Delhi-110011.

SCHEDULE

S.No.	Name of the Monument	Locality	Taluk	District	Survey Number to be included under protection
1	2	3	4	5	6
1.	Sri Azagiya Narasimha Perumal Temple	Ennayiram	Villupuram	South Arcot, Tamil Nadu	Survey Number 30 Part

Area	Boundaries	Ownership	Remarks
7	8	9	10
0.35.5 Hectares or 0.87 Acres	North : Survey Number 30 street East : Survey Number 30 South : Survey Number 30 Street West : Survey Number 30	Natham	Temple is under worship



[F.No.2/28/89-M(B)]
B.P. SINGH, Director General

187 GI/96—4

नई दिल्ली, 19 जनवरी, 1996

(पुरातत्व)

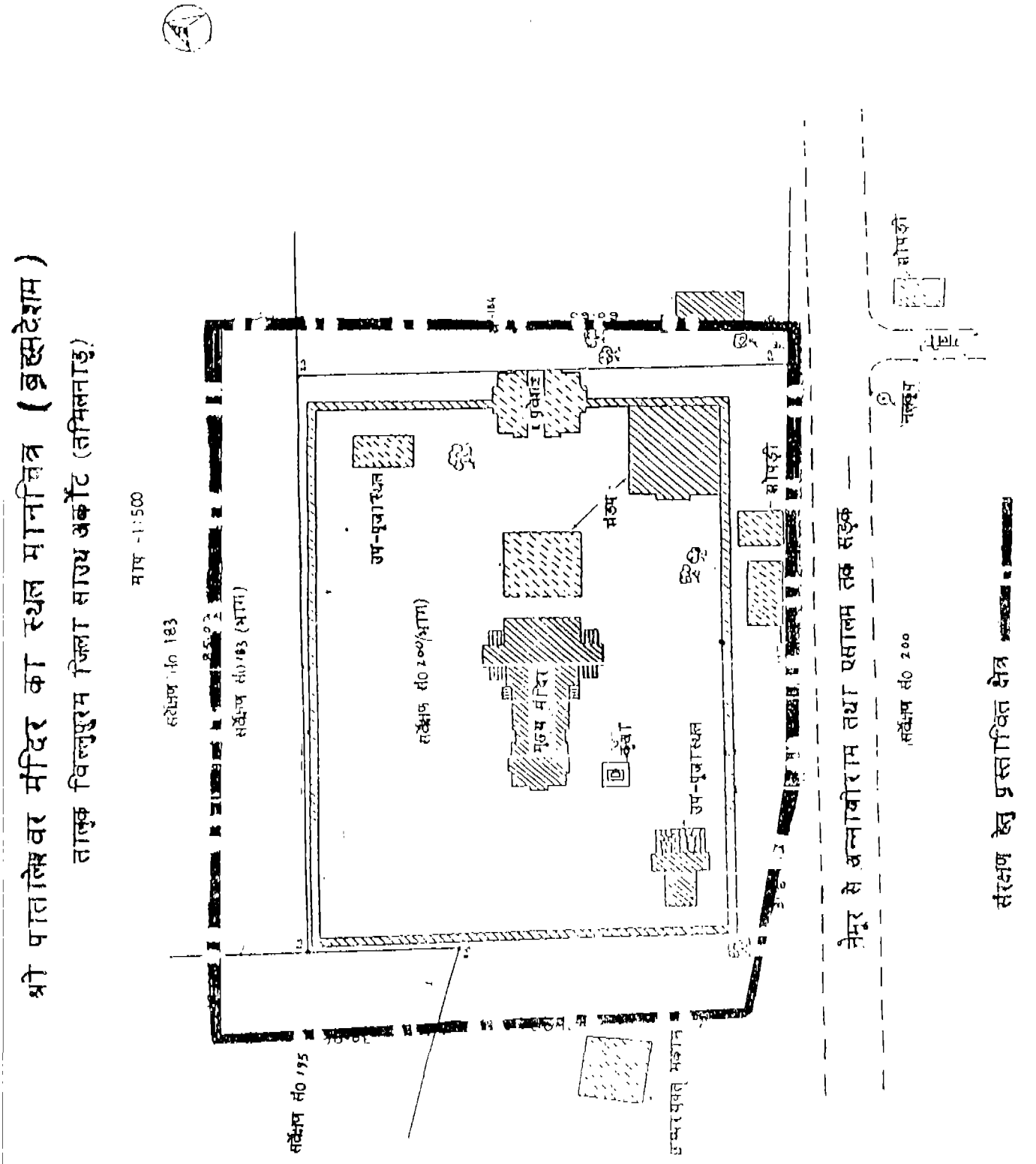
का.आ. 203.—केन्द्रीय सरकार की यह राय है कि इससे उपाबद्ध अनुसूची में विनिर्दिष्ट प्राचीन संस्मारक राष्ट्रीय महत्व का है ;

अतः अब, केन्द्रीय सरकार, प्राचीन संस्मारक तथा पुरातत्वीय स्थल और अवशेष अधिनियम, 1958 (1958 का 24) की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त प्राचीन संस्मारक को राष्ट्रीय महत्व का घोषित करने के अपने आशय की दो मास की सूचना देती है ।

केन्द्रीय सरकार, इस अधिसूचना के राजपत्र में जारी करने की तारीख से दो मास की अवधि के भीतर उक्त प्राचीन संस्मारक में हितबद्ध किसी व्यक्ति से प्राप्त किसी आक्षेप पर विचार करेगी । आक्षेप, महानिदेशक भारतीय पुरातत्व सर्वेक्षण, जनपथ नई दिल्ली-110011 को भेजे जा सकेंगे ।

अनुसूची

क्रम सं.	संस्मारक का नाम	परिक्षेत्र	तालुक	जिला	संरक्षण के लिए शामिल किए जाने वाले सर्वेक्षण संख्या	क्षेत्र	सीमाएं	स्वामित्व	टिप्पणियां
1	2	3	4	5	6	7	8	9	
1.	श्री पठलेश्वर मंदिर	अग्रहारम	त्रिचलपुरम	दक्षिण अर्काट (तमिलनाडु)	सर्वेक्षण संख्या 183 भाग	0.09.0	उत्तर : सर्वेक्षण संख्या 183 और 195	सर्वेक्षण संख्या 183 मंदिर भूमि	मंदिर में पूजा होती है।
					सर्वेक्षण संख्या 184 भाग	0.0.	पूर्व सर्वेक्षण संख्या 184 और 183	सर्वेक्षण संख्या 184 निजी	
					सर्वेक्षण संख्या 200 भाग	0.46.5	दक्षिण सर्वेक्षण संख्या 200 (सड़क)	सर्वेक्षण संख्या 200 नाथम	
					सर्वेक्षण संख्या 195 भाग	0.03.0	पश्चिम सर्वेक्षण संख्या 200 और 195	सर्वेक्षण संख्या 195 निजी	
					योग	0.62.5 हेक्टर या 1.54 एकड़			



[फा.सं. 2/28/89-ऐस]

धर्मवीर प्रसाद सिंह, महानिदेशक

New Delhi, the 19th January, 1996

(ARCHAEOLOGY)

S. O. 303....— Whereas the Central Government is of opinion that the ancient monument specified in the Schedule annexed hereto is of national importance.

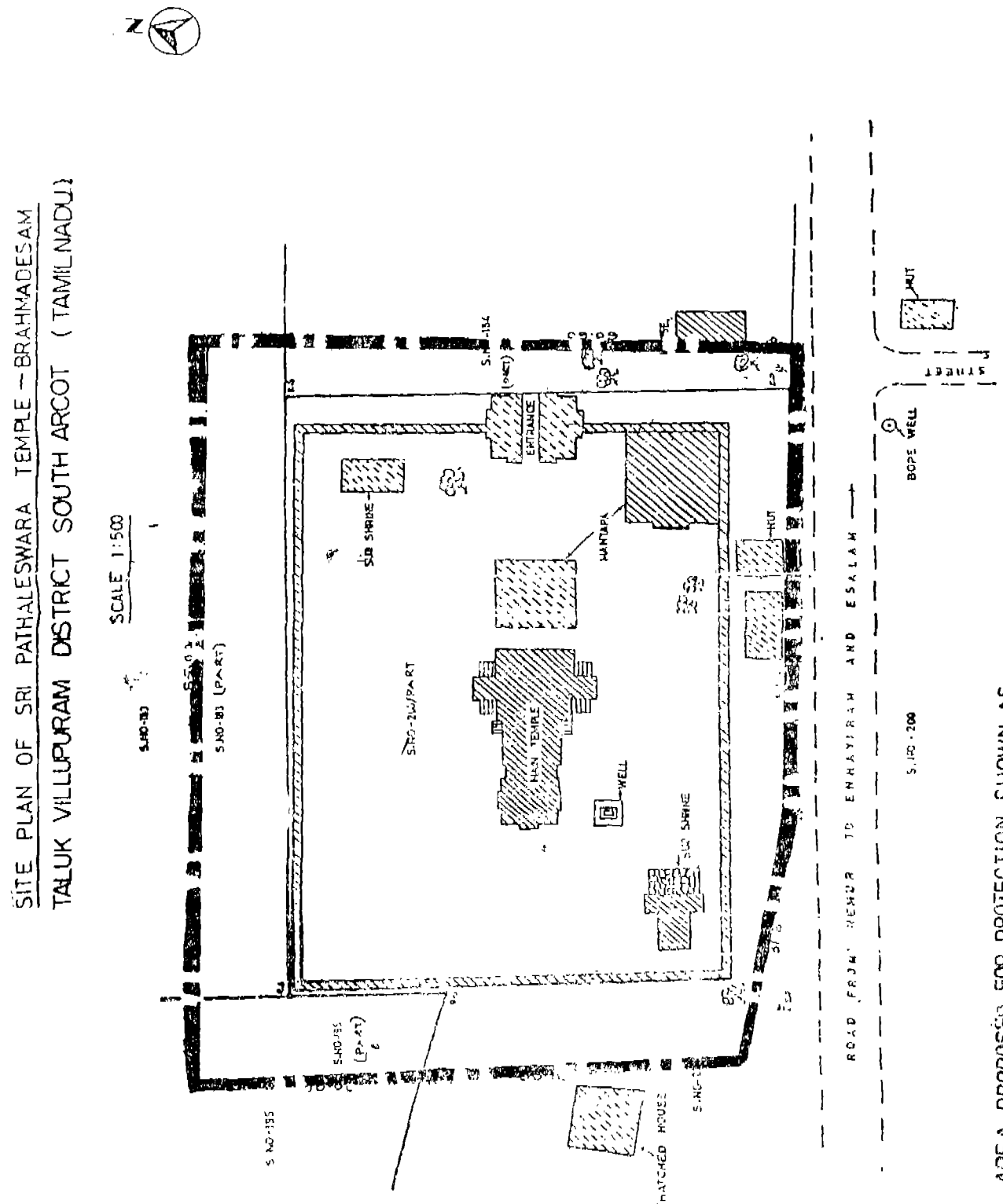
Now, therefore, in exercise of the powers conferred by sub-section (1) of section 4 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958), the Central Government hereby gives two months' notice of its intention to declare the said ancient monument to be of national importance.

Any objection which may be received within a period of two months from the date of issue of this notification in the official Gazette from any person interested in the said ancient monument will be taken into consideration by the Central Government. The objection may be addressed to the Director General, Archaeological Survey of India, Janpath, New Delhi-110011.

SCHEDULE

S. No.	Name of the Monument	Locality	Taluk	District	Survey Number to be included under protection
1	2	3	4	5	6
1.	Sri Pathaleswara Temple	Brahmadesam	Villupuram	South Arcot (Tamil Nadu)	Survey Number 183 Part Survey Number 184 Part Survey Number 200 Part Survey Number 195 Part

Area Hectares	Boundaries	Ownership	Remarks
7	8	9	10
0.09.0	North Survey Numbers 183 & 195	Survey Number 183 Temple land.	Temple is under worship
0.04.0	East : Survey Numbers 184 and 183	Survey Number 184 Private	
0.46.5	South : Survey Number 200 (Road)	Survey Number 200 Natham	
0-03.0	West : Survey Numbers 200 and 195	Survey Number 195 Private	
Total 0.62.5 Hectares or 1.54 Acres			



[F.No. 2/28/89-M]

B.P. SINGH, Director General

श्रम मंत्रालय

नई दिल्ली, 2 जनवरी, 1996

का. आ. 304—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस सी सी एल. के प्रबंधन के विरुद्ध टी कुमारा स्वामी गोदावरी खानी द्वारा उक्त अधिनियम की धारा 33 क के अनुसरण में दायर की गयी शिकायत जो केन्द्रीय सरकार को 27/12/95 को प्राप्त हुई थी, के संबंध में अनुबंध में दर्शाए गए अनुसार औद्योगिक अधिकरण हैदराबाद विवाचक का पंचाट प्रकाशित करती है ।

[सं. एल यू एस 33-ए]

राजालाल, डैस्क अधिकारी,

MINISTRY OF LABOUR

New Delhi, the 2nd January, 1996

S.O. 304.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Hyderabad as shown in the Annexure in respect of a complaint u/s 33-A of the said Act filed by T. Kumaraswami Godavarikhani against the management of S.C.C. Ltd. which was received by the Central Government on 27-12-1995.

[No. L-U.S. 33-A]

RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT HYDERABAD

PRESENT :

Sri A. Hanumanthu, M.A., LL.B. Industrial Tribunal-I.

Dated, the 21st day of October, 1995

Miscellaneous Petition No. 41 of 1994

IN

Industrial Dispute No. 90 of 1989

BETWEEN

Sri T. Kumara Swamy, Godavarikhani, Karimnagar District-500529 ..Petitioner

AND

The Management of Singareni Collieries Company Limited, Area-I Ramagundam Godavarikhani, Karimnagar District ..Respondent

APPEARANCES :

M s. G. Vidyasagar, V. Viswanadham, G. Ravi Mohan and R. Devendar Reddy, Advocates—for the Petitioner.

M/s K. Srinivasa Murthy and G. Sudha, Advocates—for the Respondent.

AWARD

This is an application filed under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter called the Act) by the workman T. Kumara Swamy for declaration that the action of the Respondent-Management of Singareni Collieries Company Limited, Area-I, Ramagundam, Godavarikhani in directing the Petitioner to work in general shift w.e.f. 3-1-1994 as illegal, arbitrary and violative of Section 33 of the Act.

2. The facts leading for filing of this application are as follows :—

The Petitioner T. Kumara Swamy was appointed as Badli Filler in the Respondent-Company in the year 1976. He was promoted as Coal Filler in 1978. In 1980 he was promoted as General Mazdoor Category I, but he had performing the duties of Bunker-Door Mazdoor Category-II. The nature of work performed by the Petitioner as Bunker Door Mazdoor is that he pulls the chain of the pullies over the bunker for loading the coal into lorries. The Petitioner made representation to the Management for his promotion as Bunker Door Mazdoor Category-II. As his request was not considered by the Management, he raised an industrial dispute before the Regional Labour Commissioner and ultimately that dispute has been referred to this Tribunal for adjudication and the same has been numbered as Industrial Dispute No. 90 of 1989. While Industrial Dispute No. 90/89 was pending, the Respondent-Management directed the petitioner to work in general shift w.e.f. 3-1-1994. The petitioner considered the said action of the Management as mala fide. According to him such action of the Management in shifting him from the post of Bunker Mazdoor on which he was working for the last 14 years, is in effect to deprive of his legitimate right for promotion and to victimise him for raising the industrial dispute in I. D. No. 90/89. Hence the petitioner has come up with this application alleging that the action of the Management is in violation of Section 33 of the Act.

3. The Respondent-Management filed a counter alleging that there is no violation of Section 33 of the Act and as such the present application under Section 33-A of the Act is not maintainable. At the instance of the petitioner, he was transferred as surface general mazdoor and the nature of work performed by him is that he pulls the chain of the pulley to the Bunker for loading coal into the lorries. The petitioner raised the dispute in I. D. No. 90/89 claiming promotion from that of surface general mazdoor Cat. I to Cat. II which is a promotional post. General Mazdoors and surface general mazdoors come within Category I and they belong to the same grade and the scales of pay and promotional opportunities are similar to every one concerned. The allocation of work is not a change in the terms of conditions of service. No employee has a right to insist that he will do a particular job. The petitioner gets the same emoluments as long as he does the work of a general mazdoor. The Respondent-Management has got a right to direct the petitioner to work in general shift and it does not amount to change of service condition of the petitioner and as such there is no violation of Section 33 of the Act. Hence the petition is not maintainable and the same is liable to be dismissed.

4. On behalf of the Petitioner-workman PW-1 is examined and Exs. W-1 to W-5 are marked. The petitioner got himself examined as PW-1 and he deposed to the averments in his petition. On behalf of the Respondent-Management RWs. 1 to 3 are examined and Exs. R-1 to R-15 are marked. P. V. Satyanarayana Reddy, Senior Under Manager working in the Respondent-Company is examined as RW-1 and he deposed to the averments in the counter. RW-2 J. Nagiah is the Superintendent of Mines working in GDK No. 2 Incline. He deposed with regard to issuing the charge sheet dated 24-10-1994 against the petitioner for his unauthorised absence and another charge sheet dated 19-1-1994 for negligence to work. RW-3 A. Sridhar Rao is the Shift Under Manager in GDK No. 2 A Incline. He deposed that the petitioner is working in unskilled job, that he previously worked as Watchman in various shifts and the petitioner is liable to be posted in various other unskilled jobs. The details of the documents Exs. W-1 to W-5 and R-1 to R-15 are appended to this Award.

5. The points that arise for consideration are as follows :

(1) Whether this petition is maintainable under Section 33-A of the Act ?

(2) Whether the petitioner is entitled for declaration that the action of the Respondent-Management in directing him to work in general shift w.e.f. 3-1-1994 is illegal, arbitrary and violative of Section 33 of the Act ?

(3) To what relief the petitioner T. Kumara Swamy is entitled to ?

6. Points 1 and 2.—Admittedly the Petitioner was originally appointed as Badli Filler in 1976 and he was promoted as Coal Filler which is an underground post, in 1978. Subsequently in June, 1980 he was promoted as General Mazdoor Cat. I. It is also not disputed that since 1980 he is working as Surface General Mazdoor. He has been entrusted with the duties of Bunker Door Mazdoor Category II. The nature of duties performed by him as Bunker Door Mazdoor Cat. II is that he pulls the chain over the pulley at the Bunker for loading coal into the lorries.

7. It is also admitted that the Petitioner and another by name Maccherla Laxmiah raised an industrial dispute before the Conciliation Officer claiming promotion as Bunker Door Mazdoor Category II on the ground that they have been performing the duties as such since 1980 and the Government of India, Ministry of Labour by its Order dated 15/18-12-1989 referred the said dispute under Section 10(1)(d) and (2-A) of the Act for adjudication of the dispute and the same has been registered as Industrial Dispute No. 90 of 1989 by this Tribunal. The dispute as referred in I. D. No. 90/89 reads as follows :

> "Whether the action of the Management of Singareni Collieries Co. Ltd., Area-I, Ramagundam Division in not promoting S/Sri Macherla Laxmaiah and T. Kumaraswamy, General Mazdoors GDK 2-A Incline (Cat. II) as Bunker Door Mazdoors is justified ? If not, to what relief the workman concerned are entitled ?"

While the said I. D. No. 90/89 was pending disposal by this Tribunal, this petitioner was directed by the Management to work as General Mazdoor Cat. I in general shift and not as Bunker Door Mazdoor Category II. The Petitioner has filed this application under Section 33-A of the Act challenging the said direction of the Management on the ground that it has been passed in contravention of Section 33 of the Act. The conditions precedent to be satisfied before filing an application under Section 33-A of the Act are as follows :

(1) There should have been a contravention by the Management concerned of the provision of Section 33 of the Act.

(2) The contravention should have been during the pendency of the proceedings before the Labour Court, Tribunal or National Tribunal as the case may be,

(3) The complainant should be aggrieved by such contravention,

(4) The application should be made to the Court or Tribunal in which the original proceedings are pending.

It is also provided in Section 33-A of the Act that the Labour Court, Tribunal or National Tribunal as the case may be shall adjudicate upon the complaint as if it were a dispute referred for adjudication i.e. like a reference made to it by the appropriate Government subject to the other provisions of the Act and the authority concerned shall submit its award to the appropriate Government. Thus under Section 33-A of the Act an employee aggrieved by wrongful order of the Management passed in contravention of Section 33 of the Act gets a right to move the Labour Court or Tribunal directly to redress his grievance without having to take a rather lengthy recourse to Section 10 of the Act. Now it has to be seen whether the impugned order of the Management directing the Petitioner to work as General Mazdoor Category I in General Shift was passed in contravention of provisions of Section 33 of the Act as contended by the petitioner.

8. Broadly speaking Section 33 of the Act impose a ban on common law contractual right of an employer to alter the conditions of service of workman or to punish him by dismissal or otherwise during the pendency of proceedings before the Industrial Tribunal. The underlying idea is that when a dispute has been referred to the authority for conciliation or adjudication as the case may be, the employer should maintain a status-quo as regards the terms and conditions of employment of the workman and maintain harmonious relations so as not to hamper consideration of the dispute in question by the authority concerned. This section also gives a right to the employer to apply to the authority concerned for lifting the ban stated above and the authority will in appropriate cases, grant permission or accord approval removing the ban as the case may be. In the instant case, it is contended that the orders of the Respondent-Management are contrary to the provisions in Clause (a) Sub-section (1) of Section 33 of the Act which deals with the matters connected with the pending dispute. It lays down that in regard to any matter connected with the dispute, the employer shall not during its pendency before the Conciliation Officer, Court or Labour Court or Tribunal prejudicially alter the conditions of service applicable to a workman at the time of the commencement of the proceedings or discharge or punish him whether by dismissal or otherwise. The sub-section also provides that the employer can bring about the change in the conditions of service of a workman or dismiss, discharge or otherwise punish him even in respect of matters connected with the dispute by obtaining previous permission in writing for his proposed action. The other provisions under Section 33 of the Act are not applicable to this case as such they are not referred.

9 The learned counsel for the Petitioner submits that at the time of the commencement of the proceedings in I. D. No. 90/89 the Petitioner was performing the duties of Bunker Door Mazdoor Category II, that Management during the pendency of the said proceedings directed the petitioner to work as General Mazdoor Category I in general shift and as such it amounts to change of service conditions of the petitioner which is prohibited under Section 33(1)(a) of the Act. The learned counsel for the Respondent, on the other hand, submits that the petitioner has been working as surface general mazdoor Cat. I and as surface general mazdoor only he was performing the duties as Bunker Door Mazdoor Cat. II and that it is open for the Management to direct the surface general mazdoor to work in any other place of work and the petitioner workmen has no right to claim that he should be posted to work in a particular job and that the allocation of work cannot be treated as charge in service condition of a workman The learned counsel for the Respondent further contends that posting a workman in shifts is an administrative function of the Management and the workman has no right to say that he will not perform the duties in a shift and therefore there is no change of service conditions of the petitioner in the instant case. The learned counsel for the Respondent also contends that the petitioner was previously posted as Watchman also and he performed those duties as Watchman It is no doubt true that the petitioner is working as surface general mazdoor Cat. I. It cannot be disputed that the Management has got every right to allocate work to its workman and the workman will have no right to insist that he should be posted to work in a particular place of job. It is also not open to a workman to say that he cannot do a particular work when his salary or emoluments are not disturbed. Under the technical circumstances, in the instant case, the order of the Respondent-Management directing the petitioner to work as general mazdoor Cat. I in general shift taking him away from his present post of Bunker Door Mazdoor Cat. II amount to change of service condition of the petitioner. Admittedly, at the instance of the petitioner and another, a reference has been made in I. D. No. 90/89 Third reference was made as the Petitioner and other sought for promotion as Bunker Door Mazdoor Cat. II. An Award was passed in I. D. No. 90/89 on 9-2-1994 by this Tribunal and Ex. W-5 is the xerox copy of the said Award. As seen from this document, the petitioner and another claimed promotion as Bunker Door Mazdoor Cat. II on the ground that they worked in that capacity for more than 12 years and that the Management denied Category II wages to them although extracting the same work After full enquiry an Award was passed in I. D. No. 90/89 and the Management was directed to promote the petitioner and another to Category II Bunker Door Mazdoor w.e.f. 1-8-1978 and the Management was also directed to pay consequential benefits including the arrears of salary. It is true that the operation of the Award has been stayed by the Hon'ble High Court in W.P.M.P. No.

26056/94 in W.P. No. 21014/94, dated 22-6-1995 and Ex. R-1 is the xerox copy of the said order of the High Court suspending the operation of the Award in I. D. No. 90/89. It is significant to note that the petitioner claimed promotion to Cat. II Bunker Door Mazdoor under the reference I. D. No. 90/89 on the ground that he was working in that capacity for the last 12 years. Even on the date of that reference he was working as Category II Bunker Door Mazdoor. Under Section 33(1)(a) of the Act, it is not open for the Management to change the said service condition of the petitioner by directing him to work in Cat. I general mazdoor in general shift. The petitioner ought to have been continued to work as Category II Bunker Door Mazdoor during the pendency of I. D. No. 90/89. The present application has been filed on 1-2-1994 during the pendency of I. D. No. 90/89. The impugned order of the Management works hard against the interests of the petitioner and it acts detrimental to the case of the petitioner in I. D. No. 90/89 The Respondent-Management has not disputed the fact that the petitioner was working as Category II Bunker Door Mazdoor at the time of the reference in I. D. No. 90/89 and by the impugned order the service conditions of the petitioner are changed and he was asked to work in Category I general mazdoor in general shift on 3-1-1994.

10. The document Ex. R-1 to R-15 relied on by the Respondent-Management are not at all relevant for the purpose of disposal of this case. Ex. R-2 is the charge sheet dated 24-10-1994 issued to the petitioner alleging that he was absent from duty without leave and he was asked to submit his explanation within three days. This document relates to the conduct subsequent to the filing of the present application. Ex. R-3 is another charge sheet dated 19-1-1994 issued to the petitioner alleging that he has not shown the account of lorry trips along with their challans to the Manway Clerk and he was directed to give explanation within three days. Ex. R-4 is the notice dated 25-11-1994 issued to the petitioner directing him to attend for the enquiry before the Personnel Officer on 28-11-1994. Exs. R-5, R-6, R-7, R-8, R-9, R-10 and R-11 are the letters addressed to the Petitioner directing him to be more careful in performing his duties in loading lorries and he was also warned to be careful in future in discharging his duties. It has come in the evidence of RWs. that though charge sheets were issued to the Petitioner, no enquiry was conducted against him. Exs. R-12 to R-15 are said to be the acknowledgements of the petitioner with respect to the receipt of the above said letters. All these documents are not at all relevant for the purpose of disposal of this petition. It is in the evidence of RW-3 that the petitioner also worked as Watchman for some time during 1992-93. RW-2 deposed that the petitioner herein has commited some misconduct for which the management had initiated disciplinary action. He also admits that those misconducts are no way connected with I. D. No. 90/89. Thus the evidence of RW-2 and RW-3 is not at all relevant for the purpose of this case. RW-1 admits in his cross examination that since 1980 the petitioner performed the duties of Bunker Door Mazdoor Cat. II and that the petitioner raised the industrial dispute in I. D. No. 90/89 to confirm his service as Bunker Door Mazdoor and that industrial dispute was disposed directing the Management to confirm the workman to Bunker Door Mazdoor since 1980. RW-1 has categorically admitted that the petitioner was working as Category II Bunker Door Mazdoor at the time of raising the dispute in I. D. No. 90/89. While pending disposed of that industrial dispute the Respondent-Management passed the impugned order directing the petitioner to work as Cat. I general Mazdoor in general shift w.e.f. 3-1-1994 and it amounts to change of service condition of the petitioner during the pendency of industrial dispute in I. D. No. 90/89. The petitioner is aggrieved on account of the impunged order of the management.

11. In the light of the above discussion, I hold on point (1) that as there is contravention of provisions of Section 33(1)(a) of the Act by the Management, this present petition filed under Section 33-A of the Act is maintainable. I hold on point (2) that the action of the Respondent-Management in directing the petitioner to work in Category I general mazdoor in general shift w.e.f. 3-1-1994 is illegal, arbitrary and violative of Section 33(1)(a) of the Act,

12. Point (3).—This point relate to the relief to be granted to the petitioner in this petition. In view of my finding on points 1 and 2 above, the petitioner is entitled to continue to work as Bunker Door Mazdoor Category II.

13. In the result, Award is passed stating that the impugned order of the Respondent-Management directing the petitioner to work as General Mazdoor Category I in general shift w.e.f. 3-1-1994 is illegal, arbitrary as it contravened the provisions of Section 33(1)(a) of the I. D. Act and that the petitioner is entitled to continue to work as Bunker Door Mazdoor Category II. The parties are directed to pay their costs in this petition.

Dictated to the Stenographer, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal, this the 21st day of October, 1995.

A. HANUMANTHU Industrial Tribunal-I

Appendix of Evidence

Witnesses examined for the Petitioner :

PW-1—T. Kumaraswamy.

Witnesses examined for the Respondent :

RW-1—B. V. V. Satyanarayan Reddy.

RW-2—J. Nagaiah.

RW-3—A. Sridhar Rao.

Documents marked for the Petitioner

Ex. W-1/14-7-94—Representation made to the General Manager, S.C. Co. Ltd., RG. I by the workman.

Ex. W-2/24-10-94—Enquiry Notice issued to the petitioner.

Ex. W-3/18-1-94—Representation made to the Colliery Manager GDK No. 2 A Incline.

Ex. W-4/23-10-94—Representation made by the petitioner to the Colliery Manager GDK No. 2-A Incline.

Ex. W-5 —Xerox copy of the Award of I. D. No. 90/89.

Documents marked for the Respondent

Ex. R-1/23-6-95—Xerox copy of the High Court Order in W.P.M.P. No. 26056/94 in W.P. No. 21014/94.

Ex. R-2/24-10-94—Charge Sheet for unauthorised absence of the Petitioner.

Ex. R-3/19-1-94—Charge sheet for negligence issued to the Petitioner.

Ex. R-4/25-11-94—Notice of enquiry issued to Petitioner.

Ex. R-5 to R-11—Warning letters issued to the petitioner.

Ex. R-12 —Acknowledgement to Exs. R-5 by Petitioner.

Ex. R-13 —Acknowledgement of petitioner.

Ex. R-14 —Acknowledgement by Petitioner.

Ex. R-15 —Acknowledgement by Petitioner.

नई दिल्ली, 2 जनवरी, 1996

का. आ. 305.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू सी एल के प्रबन्धतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बम्बई नं. 2 के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27 दिसम्बर 95 को प्राप्त हुआ था।

[सं एल 22012/26/92 आई आर सी II)]

राजालाल, डैस्क अधिकारी

New Delhi, the 2nd January, 1996

S.O. 305.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Bombay No. 2, as shown in the Annexure in the industrial dispute between the employers in relation to the management of W.C. Ltd., and their workmen, which was received by the Central Government on the 27-12-95.

[No. L-22012/26/92-IR C-II]

RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, BOMBAY

PRESENT :

Shri S. B. Panse, Presiding Officer.

REFERENCE NO. CGIT-2/32 OF 1992

Employers in relation to the management of Hindustan Lalpeth Colliery of M/s. WCL

AND

Their Workmen

APPEARANCES :

For the employers : Shri G. S. Kapoor, Advocate.

For the workmen : Shri S. R. Pendre, Representative.

Bombay, dated 6th December, 1995

AWARD-PART-I

The Government of India, Ministry of Labour by its letter No. L-22012/26/92-IR (C-II) dated 12/21 of May, 1992 had referred to the following Industrial Dispute for adjudication.

"Whether the dismissal from service of Shri Ram Surat Ram Narayan Chauhan, Coal Dresser w.e.f. 21st August,, 1991 by the Sub-Area Manager, Hindustan lapeth Colliery W.C. Ltd., Chandrapur, is legal and justified ? If not to what relief the workman is entitled to?"

2. The Union filed a statement of claim at Ex-'4'. It is contended that Ram Surat Ram Narayan Chauhan was working as worker since 1982 at Nandgaon Incline which is under Sub-area of Lapeth Colliery. He was entitled to L.L.T.C. for the block 1987 to 1990. In his credit there was a balance of 22 dates leave. In February' 1990 he applied to Nandagaon Colliery for L.L.T.C. It is because he was working there before Second of May' 1990.

3. Mr. D. Prasad. Asstt. Manager was the sanctioning authority of L.L.T.C. The worker and his colleagues happened to meet D. Prasad about eight days prior to 20-3-90. Prasad asked them to come to his office on 20-3-90 for sanctioning of the leave.

187 GI/96—5.

4. It is pleaded on behalf of the union that on that day the worker had been to the office of Prasad along with 8 to 10 workers who was in the que. When his turn came to enter the office of Prasad, one Bhashkar Asstt. Manager was sitting with him. After seeing the worker both of them laughed. Prasad said to the worker with an abuse that he come there in a drunken stage and pushed him away. He was literally driven out of the office. He was abused.

5. On 20-3-90 when the worker went to attend his duty the clerk in charge of the muster refused to mark him present, and stopped him from attending the duties. The other workers objected for this illegal action but the manager convinced them and they were sent for work. At about 10-30 to 11-00 a.m. the sub-area manager send him a charge-sheet dated 20/21 3.90 from his office. On the very day the worker was terminated under Article 17(E), 17(R) and 17(T) of the Model Standing Order. The worker replied to the charge-sheet denying the charges against him by his reply dated 22-3-90. He requested for the enquiry and prayed that he may be allowed to join the duty. It is pleaded on behalf of the worker that the domestic enquiry which was held against him was against the principles of Natural Justice. On 20-4-90, Superintendent of Mines, Nandgaon Incline by the manager Lalpeth Colliery No. 1 asked him to join at Lalpeth Colliery No. 1. It means that he was transferred during the period of his termination which is against the law. It is accepted that the worker was allowed to represent in the domestic enquiry with the help of co-worker. It is averred that the enquiry office was not fair in conducting the domestic enquiry. It is submitted that the worker was not given a change to defend himself. His prayer to change the enquiry officer was rejected. It is submitted that the enquiry officer was not impartial and was acting on the part of the management. It is submitted that the report of the enquiry office nor the proceedings are fair. It is submitted that for all these circumstances the action which is taken by the management is illegal. It therefore prayed that the worker may be reinstated in service in continuity with full back wages.

6. The management resisted the claim by the W.S. Ex-'5'. It is pleaded that the Lal Bavata Kovla Kamgar union who espouse the case of the worker has no authority to do so. It is pleaded that no Industrial Dispute is contemplated u/s. 2K of the Industrial Dispute Act existed between the workman and the workmen and the dispute is regarding the dismissal of the workman in question from the services of the management. It is averred that the reference is not tenable under the law. It is pleaded that the Tribunal had no jurisdiction to entertain and decide the present reference.

7. The management averred that the domestic enquiry which was held against the workman was as per the Principles of Natural Justice. He was given full opportunity to defend his case and lead evidence as per his wish. It is submitted that the report of the enquiry officer is perfectly legal and proper. His findings are well reasoned. It is therefore submitted that the order which is passed by the management is perfectly legal and justified. It is therefore prayed that the reference may be answered accordingly.

8. My predecessor framed issues at Ex-'6'. On 22-6-93 he passed order treating issues No. 1 to 5 as preliminary. It is therefore, I have to decide these issues first.

9. The issues and my findings thereon are as follows :

Issues	Findings
1. Whether the Lal Bavata Kamgar Union is not competent to raise the Industrial Dispute on behalf of the workman in question?	No.
2. Whether no Industrial dispute as contemplated u/s. 2(K) of the I.D. Act existed between the workman/workmen and the mat. regarding the dismissal of the workman in question form the service of the management?	Does not arise.
3. Whether the present reference is tenable in law?	Yes

4. Whether the Tribunal has jurisdiction to entertain and decide the present reference. Yes

5. Whether the inquiry held against the workman was not held properly, and the rules of natural justice were not followed ? Yes

REASONOS

10. Both the parties have filed written arguments in the matter. It is argued on behalf of the union that the union came into existence after the date of dismissal of the worker. He joined it later on. Therefore it had every right to take up the case of the worker. It is not the case of the management that the above said argument which I have repeated is untrue.

11. The management had taken the contention that the dispute is not u/s. 2K of the Industrial Disputes Act. No doubt it is not a dispute as contemplated u/s. 2K of the Industrial Disputes Act.

12. Under the Industrial Disputes Act there are two different sections 2A and 2K under which the issue of dismissal could be referred to section 2K had been existing from the commencement of the Industrial Disputes Act but so far as section 2A is concerned it was introduced only since 1965. Under section 2K, the dispute has to be of general type, concerning the worker in general. It is tried to argue that u/s. 2A the legal fiction was introduced that the individual dispute relating to dismissal/discharge/termination/retrenchment could also be deemed to be Industrial Dispute whether no other workmen or any union is party to the Dispute. It is not that such a dispute is to be raised by the worker himself. It is tried to argue that the union is not allowed to raise such a dispute. I am not inclined to accept this submission. Admittedly the present dispute was taken by the union to the conciliation office and in turn he sent the negative report. Then the present reference by the Central Government. It is tried to argue that as the union represents the case of the worker it is a collective dispute and is not tenable under the law. This argument is without any merit. Looking to the terms of the reference also it can be seen that there is no mention of section 2K of the Industrial Disputes Act The Government never treated this dispute as a collective dispute. In fact it cannot be treated as a collective dispute as it relates to the termination of a workman.

13. Whether the particular union is a registered union or not is not bar at all It is tried to argue that there could be a authorisation for making representation in a particular matter by the union. Here in this case the worker had given the authority to the General Secretary of the union to represent his case. Under such circumstances he is entitled to represent the case of the worker. As I have already observed above being Industrial Dispute and it being referred to this Tribunal by the Central Government it has the jurisdiction to decide the matter. I do not find any reason nor any cogent reasons are put forward for coming to the conclusion that the reference is not tenable. As the Industrial Dispute is referred to this Tribunal by the Central Government it has the jurisdiction to decide the same.

14. That makes me to question of domestic enquiry In the statement of claim it is tried to bring on the record that the domestic enquiry which was held against the workman was against the principles of Natural justice. On 12-9-95 when the Tribunal was sitting at Nagpur the representative of the workman who is the General Secretary of the union orally submitted that the enquiry which was held against the worker is proper. Hence he does not want to lead any oral evidence in the matter. It can be seen that on 14-9-95 he passed a purshis (Ex-'20') that the enquiry which was held against the workman was fair and proper but finding of the enquiry officer was for purverse. So far as deciding issue No. 5 this purshis could be taken into consideration for coming to the conclusion that the enquiry which was held against the workman was legal and proper.

15. I may mention it here that both the parties have filed written argument concerning all the issues but as there is order of my predecessor that issues No. 1 to 5 are to be treated as preliminary issues and as the parties have not filed any purshis informing the Tribunal that all the issues may be decided at one time. I cannot decide the remaining issues in this way. In the result I record my findings on the issues accordingly and pass the following Order :

ORDER

1. The domestic enquiry which was held against the worker was proper.

2. The union is competent to raise the dispute and represent the case of the worker and the court has jurisdiction to try reference which is tenable.

S. B. PANSE, Presiding Officer

नई दिल्ली, 2 जनवरी, 1996

का. आ. 306—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ सी आई के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपूर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-12-95 को प्राप्त हुआ था।

[सं. एल 31/30/86 को I/डी II-(बी)]

राजा लाल, डैस्क अधिकारी

New Delhi, the 2nd January, 1996

S.O. 306.—in pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of FCI and their workmen, which was received by the Central Government on the 27-12-95.

[No. L-31/30/86-Con.-I/D-II(B)]

RAJA LAL, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, PANDU NAGAR, KANPUR

Industrial Dispute No. 53 of 1987

In the matter of dispute between :

President Bhartiya Khadya Nigam Mazdoor Sangh Lucknow.
AND
Divisional Manager,
Food Corporation of India,
Lucknow

AWARD

1. Central Government, Ministry of Labour, New Delhi, vide its notification no. L-31/30/86-Con. I/D.II(B) dt. 25th May, 1987, has referred the following dispute for adjudication to this Tribunal—

"Whether the action of the District Manager FCI Lucknow, in terminating the services of Sri Balgovind Ex-Loader w.e.f. 12-6-75 is legal and justified ? If not, to what relief and from what date, he is entitled to?"

2. Concerned workman has alleged that he was appointed as Loader in Food Corporation of India, in 1972. Because of his Trade Union activities, he was not allowed to join his duties on 12-12-75. His termination is illegal as he was not paid retrenchment compensation and notice pay.

3. The opposite party Food Corporation of India, has filed reply in which, interalia, it was alleged that the concerned workman was not their direct employee. Instead he was a contract labour.

4. After exchange of papers the concerned workman failed to put in his appearance for giving his evidence. Hence, the management also did not give any evidence. In this way there is no evidence to prove the case of the concerned workman.

5. Hence, my award is that the termination of Balgovind Ram w.e.f. 12-6-75 is justified. Consequently, the concerned workman is entitled for no relief. Reference is answered accordingly.

12-12-95

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 4 जनवरी, 1996

का. आ. 307.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार टेलीकाम के प्रबंधतंत्र से संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बम्बई नं. 2 के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27 दिसम्बर को प्राप्त हुआ था।

[संख्या एल-40012/134/92-आई आर (डी यू)]

के० वि० बी० उण्णी, डैस्क अधिकारी

New Delhi, the 4th January, 1996

S.O. 307.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947, the Central Government hereby publishes the award of the Central Government Industrial Tribunal Bombay No. 2, as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of Telecom and their workmen, which was received by the Central Government on 27-12-95.

[No. L-40012/134/92-IR(DU)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, BOMBAY

PRESENT :

Shri S. B. Panse, Presiding Officer

Reference No. CGIT-2/82 of 1993

Employers in relation to the management of Telecom Department, Nasik.

AND

Theid Workmen

APPEARANCES :

For the Employers.—Shri P. M. Pradhan Advocate.

For the Workmen.—Shri H. Y. Deo, Advocate.

Bombay, dated 1st December, 1995

AWARD

The Government of India, Ministry of Labour by its letter No. L-40012/134/92-IR(DU) dtd. 20-10-93 had referred to the following Industrial Dispute for adjudication :

"Whether the action of the management of Telecom District Manager, Nasik in terminating the services of Shri Raghunath K. Tipayale, casual Mazdoor without complying with provisions of Sec. 25F of I.D. Act, 1947 is justified ? If not, what is the relief to which the workman is entitled ?"

2. Raghunath K. Tipayale, the workman of Nasik claims to be appointed on a sympathetic ground at Nasik Telecom District, Nasik, in the place of his elder brother Late Dagadu K. Tipayale. He died when he was on duty. The said appointment was from 1st April, 1985. He was appointed with n fifteen days from the death of his brother.

3. The casual labourer, the worker was required to do various jobs like lifting of heavy telecom equipments from one place to other and digging trenches and pits on the roads, etc. He did his job sincerely. From the date of appointment till 31-5-87 he worked continuously for 771 days excluding the weekly offs and other holidays. He was paid regularly monthly salary though on the daily wage basis as per the rules and regulations of the Telecom. Infact the worker was engaged against the work of permanent nature. He was engaged as a casual labourer. It was done so with the intention to deprive him of the status and privileges of a permanent employee.

4. The S.D.O. Nasik gave one months notice to the workman vide his letter dtd. 20-5-87 and informed that his services were no longer required. It was also informed that he would be removed from the services w.e.f. 20-6-87. Again on 10-6-87 the S.D.O. Nasik gave another notice and informed that the earlier notice be treated as cancelled and the workmans one months pay is being paid to him by service money order. He was also informed that his services are terminated forthwith w.e.f. 10-6-87.

5. The workmen made representations to S.D.O. Nasik to consider his case. But it was of no use. Then he made representations to the Asstt. Labour Commissioner in the conciliation proceedings. The S.D.O. Nasik, informed the Astt. Labour Commissioner that he is willing to appoint the worker as a casual labourer under certain terms and conditions. By the said letter the Telecom was ready to appoint him when the work was available but his services would be terminated on completion of that term and the payment will be given on A.C.G. 17.

6. The workmen contended that his retrenchment is illegal. The Telecom Deptt. had not taken necessary permission from the appropriate Government u/s. 29F of the Industrial Disputes Act of 1947. As there no compliance of Section 29 M of the Industrial Disputes Act the retrenchment is void. It is submitted that the work was available and as such the retrenchment was illegal. It is averred that the decision of the Telecom is Arbitrary and deserves to be set aside. It is prayed that under such circumstances the worker may be reinstated in service with full back wages and other reliefs.

7. The management repudiated the claim by the written statement Ex-3. It is averred that the policy decision was taken by the telecommunication Board. Deptt. of telecommunication where in directives were issued by circular dt. 30-3-85 to stop fresh recruitment to casual Labourers and as per the directives of the said circular the action has been taken on terminating the services of the worker. It is denied that the workmen was given appointment as a casual labour on compassionate ground. But he was engaged on hymanitarian ground purely on temporary basis. At the time of engaging him he was informed that his engagement was on purely temporary basis as per the requirement of the department. It is denied that the worker was engaged as a casual labourer against the work of a permanent nature with the intention of depriving him the status and privileges of the permanent employee. He was engaged as a daily rate worker and was paid for the days he performed the work.

8. It is contended that the workmen was removed as per the directions of the superiors after givining him one months salary. It is submitted that the management had followed the provisions of Section 25M of the I.D. Act. It is averred that the offer which was made at the time of conciliation proceedings was not accepted by the worker. It is submitted that as the worker was paid one months wages as required under the law. As such retrenchment is legal and proper. For all these reasons it is submitted that the prayer which is made by the workmen may be rejected with costs.

9. The issues that fall for my consideration and my findings there on are as follows :—

Issues	Findings
1. Whether the action of the Mgt. of Telecom District, Manager, Nasik in terminating the services of Shri Raghunath K. Tipayale casual Mazdoor without complying with the provisions of section 25F of the I.D. Act 1947 is justified ?	No.
2. If not what is the relief which the workman is entitled to ?	As per order.

REASONS

10. Raghunath K. Tipayale (Ex '9') affirmed that he was appointed on a compassionate ground as a casual labour on 1-4-1985 after his brothers death when he was on duty. Even though it is denied by the managemen. that his appointment for some compassionate ground, that appears to be incorrect statement Ex. '4/2' is an order by which he was given appointment. It clearly speaks out that he was appointed on compassionate ground. The word which is tried to be used by the management "Humanitarian" is incorrect.

11. Raghunath affirmed that he worked for 771 days. This position is not disputed by B. K. Kaul (Ex-9) Divisional Engineer. The certificate to that effect is given by the competent authority as at Ex-4/1. In other words it is very clear that from 1-4-83 to 30-5-87 the worker worked for 771 days continuously. He is to be called in a continuous service as contemplated u/s. 25F of the Industrial Disputes Act of 1947.

12. Raghunath affirmed that initially he was given a notice dtd. 20-5-87 (Ex '4|2') by which he was intormed that his services are no longer required by the Department. He was also informed that his name would be removed from muster role w.e.f. 20-6-87. Thereafter on 10-6-87 another notice (Ex '4|4') was addressed to him and he was informed that one months wages are being paid to him by service money order. Raghunath affirmed that he had not received any money order. As against that Kaul affirmed that such a money order was sent by receipt No. 3306 dtd. 19-3-91 but he was not sure whether such amount was received by him or not. He affirmed hat if he is directed he could produce the original documents relating to the payment. It can be seen that the management had to prove that such a payment was made. For that the burden was on them to produce the evidence. But no such evidence is produced. A, the most from the testimony of Kaul it can be seen that money order was sent but there is no proof that the worker received it. Mr. Deo the Learned Advocate for the worker vehemently argued that the best evidence which is in possession of the management is not produced to show such payment was made. It is therefore necessary that the adverse inference is to be drawn against them that no such payment was made. I find substance in this. There is no reason why the management has not produced the money order coupons to show that the payment was received by the worker.

13. The Learned advocate for the workman argued that there is non compliance of sec. 25 M of the I.D. Act. According to him sec. 25 F is not applicable as there are more than one hundred workers in the Telecom division at a relevant time. It is also contended that in the statement of claim they have contended that there is non complaince of section 25 M and in the written statement the plea which is taken by the management is that they have complied with section 25 M.

14. Even for sake of argument it is said that section 25 F is applicable as per the terms of the reference. It has to be stated that the management has not complied with the same. It is because the termination was on 10-6-87. As per the testimony of Kaul the payment was set on 19-3-90. If that is so it has to be said it was not paid on the date of retrenchment. If that is so it has to be said there is non complaince of section 25 F of the Industrial Disputes Act.

15. In Syed Azam Hussainin V. Andhra Bank Ltd. 1995 AIR SCW 1302 their Lordships have observed that one months wages in lieu of notice not paid at the time of such retrenchment and paid subsequently. It amounts to non complaiance of sec. 25 F and the termination is illegal. From the ratio given in the above said authority it has to be said that the termination is illegal.

16. If the argument of the Learned Advocate of the workmen has to be accepted that secton 25 N of the Industrial Disputes Act is applicable then in that case the worker was to be paid three months wages in view of the three months notice. Obviously there is no notice of three months nor payment of wages for three months. In other words section 25 N is not complied.

17. It can be further seen that section 25 N contemplates the prior permission of he appropriate Government or authority as may be specified by that Govt. by notification by the Official Gazette has been obtained on the application made in this behalf. According to the management they have acted as per the terms of their superiors and therefore there is complaince of this part of the section. I find substance in it.

18. It is not in dispute that Telecom District Engineer, Nasik, Telecom Dist. issued a circular dtd. 30-3-85 (Ex-6|1) in respect of recruitment of casual mazdoors. He so informed that in view of the circular issued by the Telecom dtd. 22-4-87 (Ex-6|2) no seperate orders are requied to be issued in respect of the worker. There is another letter dt. 22-4-87 by which all the concerned were informed that there should not be any appointment of Casual Labourers after 30-3-85. On the basis of this letter the management had to take the action against the worker. The scheme was also prepared in view of the Supreme Court Judgement in respect of granting of a temporary staus and regularisation of Casual Labourers. It is produced along with Ex-6.

19. In Suesh Keshav Rao Gard v|s. Union of India and other. It is in 1980-95 (1) pg. 40. was a case wherein the Central Administrative Tribunal came to the conclusion that when the Casual Labourers who acquired the temporary status was terminated from service before the scheme for grant for temporary status and regulaisation of Casual Services has come in to force w.e.f. 1-10-89 is entitled to relief to Squashing the termination. Here in his case the worker was terminated long back before the scheme came in to operation He was a continuous worker. For the reason stated above and for the ration given in the above said authority the termination has to be set aside and he has to be given a temporary status.

20. Raghunath immediately after his termination made a representation on 16-6-87 (Ex-4|5) to the management. He demanded reinstatement in service. But it appears that he was not given such a reinstatement. It is tried to argue on behalf of the workmen that he made a representation again but there is no record to that effect. I am not ready to accept it. On 21-3-90 the worker addressed a letter to the Telecom Dist. Manager, Canada Corner, Sharanpur Road, Nasik-2 (Ex-4|6) and its copy was sent to the Asst. Labour Commissioner. The subject was Reinstatement with full back wages and continuity in service. The worker affirmed that he was not employed any where in the period and got any earnings for himself. There is no evidence or record to show that he was gainfully employed. In Vashrambhai Devjibhai v|s. Union of India and Ors. 1980-1995 (2) pg. 95 his Lordship observed that when the termination held to be invalid the worker is entitled for back wages from the date of the filing of the application In that case the worker did not raise a dispute immediately but had raised the same after about three to four years. His Lordship observed that in that case he is entitled to back wages from that date only. Here in this case also it can be seen that after making the representation to the management the worker kept quiet for three years and then made representation to management and its copy was sent to the Asst. Labour Commissioner. I take that. that is the representation made by the worker to the Asstt.

Labour Commissioner in respect of his termination. It is not in dispute that thereafter there was a conciliation proceeding and in which the offer was made to the worker to appoint him on certain conditions. It appears that these conditions were not acceptable to the worker. From the W. S. it appears that if the worker would have accepted these conditions he would have been treated as a labourer of the contractor and not of the Telecom department. It appears that therefor he might have refused that offer. As I have come to the conclusion that the grievance is valid and the worker is entitled to back wages from the date of the application which he made to the Asstt. Labour Commissioner and not earlier.

21. It is not in dispute that after termination of this worker the work which was allotted to the worker was done by others. It is not in dispute that there were appointments of casual labourers even after circulars and therefore in view of the Supreme Court direction the scheme was to be prepared for grating temporary status and regulation of Casual Labourers. Therefore it has to be said that the work which the workman was doing was available for him if he would not have been terminated. For all these reasons I record my findings on the Issues Accordingly and pass the following Order .

ORDER

1. The action of the management of Telecom District Manager, Nasik in terminating the service of Shri Raghunath K. Tipayale, Casual Mazdoor without complying to the provisions of Sec. 25F of Industrial Disputes Act of 1947 is not justified.

2. The management is directed to appoint him as Casual Mazdoor with immediate effect

3. The management is also directed to make the payment of wages to him from 21-3-90

4. The worker is given continuity of service with effect from his initial date of appointment but only for the purpose of grant of temporary status and terminal benefits. It is made clear that the grant of continuity of service to the worker will be without affecting the seniority and promotions if any of any of the Casual employees who might have been engaged or are engaged since the termination of the worker

S. B. PANSE, Presiding Officer

नई दिल्ली, 4 जनवरी, 1996

का. आ. 308.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सैना फार्म के प्रबन्धतंत्र के सबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27 दिसम्बर 1995 को प्राप्त हुआ था।

[सख्या एल-14012/1/89-आई आर (डी यू)]

के. वि. बी. उण्णी, डैस्क अधिकारी

New Delhi, the 4th January, 1996

S.O. 308.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Kanpur as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of Sainya Farm and their workmen, which was received by the Central Government on 27-12-95.

[No. L-14012/1/89-IR(DU)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, PANDU NAGAR, KANPUR

Industrial Dispute No. 105 of 1990

In the matter of dispute between :

Ram Singh Yadav,
S/o Deo Saran,
Sainya Farm Dehradun Cantt.

AND

Prabhari Adhikari,
Sainya Farm,
Dehradun Cantt.

AWARD

1. Central Government, Ministry of Labour, vide its notification no. L-14012/1/89-D-2(B) dated 29-3-90, has referred the following dispute for adjudication to this Tribunal—

"Kya Sainya Ram Dehradun ke Prabhari Adhikari Dwara Sri Ram Singh Yadav ko dinank 5-11-84 se sewa se nivrat kiya karya nyayochit hai ? Yadi nahi to sambandhit karmkar kis anutosh ka adhikari hai?"

2. The concerned workman Ram Singh in his statement of claim has alleged that earlier he was appointed as a purely daily rated worker on 1-5-82 by the opposite party Military Farm Dehradun. He worked there at this job upto 31-3-83 From 1-4-83 he was given grade of class IV and was paid monthly wages. He had worked upto 4-11-84. His services were also terminated w.e.f. 5-11-84. Surendra Singh, Vijai Singh and Binu Singh are junior to the concerned workman and they have been retained in service. While terminating the services of the concerned workman he was not paid notice pay and retrenchment compensation, hence his termination is illegal.

3. Opposite party was filed reply in which in the first validity of the reference has been disputed on the ground that the opposite party is not an industry. On facts it was denied that the concerned workman had worked continuously w.e.f. 1-5-82. He did not work at all in June 1982. He had left the job on 31-5-84 and had rejoined on 4-7-84. In any case his services were not terminated. He has abandoned the services.

4. The concerned workman filed rejoinder in which nothing new has been said.

5. In support of his case the concerned workman has filed his affidavit and he has also been cross-examined. In support of his case he has also filed copies of certificate issued by Superintendent of the Farm dt. 22-2-88 in which it has been verified that the concerned workman had worked from 1-5-82 to 31-3-84 as daily rated worker and from 1-4-84 to 31-5-84 and from 4-7-84 to 3-11-84, on monthly rates.

6. In rebuttal there is evidence of P. N. Sharma, Office Superintendent. He has also been cross-examined. Further attendance register of the month of June 84 have been filed to show that the concerned workman did not work at all. Whereas in the month of June 1984, he had worked for 24 days. This shows that the management has got attendance register of the concerned workman. In my opinion, the management ought to have filed the relevant extracts of attendance register from 1983 to November 1984 by which extract the number of days for which the concerned workman had worked could have been ascertained. In the absence of this paper adverse inference has to be drawn. Thus because of adverse inference and also because of certificates the reference of which has been made above coupled with the evidence of the concerned workman it is established that the concerned workman has worked from 1982 upto atleast 3-11-84 and during this period atleast in the last calendar year he had also completed more than 240 days. In this way the provisions of sec. 25F I.D. Act was clearly applicable. It was perhaps because of this that in the written

statement it was averred that retrenchment compensation was offered but the concerned workman refused to accept it. There is no convincing evidence to show the concerned workman had voluntary abandoned the service. Indeed in this days there is an accute unemployment and no one would voluntary leave the job. Further annexure filed alongwith affidavit of P. N. Sharma, goes to show that the services of the concerned workman were dispensed by order dt. 5-11-84.

7. In view of above discussion. It is held that the service of the concerned workman were terminated. Since the retrenchment compensation and notice pay was not given this termination is invalid.

8. There is no evidence to show that junior to the concerned workman were retained in service. Hence, challenge to termination order on this score is negatived.

9. Firstly I am not inclined to accept the contention of the management that the opposite party is not an industry. For the reasons given in Union of India versus Presiding Officer Central Government Industrial Tribunal Jabalpur and others, 1995 Lab. I.C. 108 (Madhya Pradesh High Court). I have no manner of doubt that the opposite party management falls in the definition of Industry.

10. In the end as the termination of the concerned workman is held to be invalid, my award is that the action of the management in terminating the services of the concerned workman is unjustified. However, because of unexplained delay in seeking the reference, the concerned workman will be entitled for back wages at the rate at which he was drawing a the time of termination, from the date of reference. Workman shall also get Rs. 100/- as costs of the case from the management.

11. Reference is answered accordingly.

19-12-95

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 4 जनवरी, 1996

का. आ. 309.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार फोन्स के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27 दिसम्बर 1995 को प्राप्त हुआ था।

[संख्या एल-40012/54/95-आई आर (डी यू)]

के. वि. बी. उण्णी, डैस्क अधिकारी

New Delhi, the 4th January, 1996

S.O. 309.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Phones and their workmen, which was received by the Central Government on 27-12-95.

[No. L-40012/54/95-IR(DU)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, PANDU NAGAR, KANPUR

Industrial Dispute No. 178 of 1991

In the matter of dispute between :

Shri Shyam Narain Tripathi through Mantri, Bhartiya Daktar Mazdoor Sangh, 2, Naveen Market, Parade, Kanpur-208001.

AND

Divisional Engineer (Phones),
Benajhabar,
Kanpur.

AWARD

1. The Central Government, Ministry of Labour, New Delhi, vide its notification No. L-40012/54/91-I.R.D.U. dated nil has referred the following dispute for adjudication to this Tribunal—

Whether the action of the management of Divisional Engineer (Phones) Benajabar, Kanpur in terminating the services of Shri Shyam Narain Tripathi w.e.f. 28-8-89 is justified ? If not, to what relief he is entitled ?

2. In the instant case despite issue of notice neither the workman appeared nor filed statement of claim. It thus appears that the concerned workman is not interested in prosecuting his claim.

3. Therefore, in view of above the reference is decided against the concerned workman for want of pleadings and proof.

4. Reference is answered accordingly.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 4 जनवरी, 1996

का. आ. 310.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एम. ई. एस. के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27 दिसम्बर, 1995 को प्राप्त हुआ था।

[संख्या एल-14012/100/90-आई आर (डीयू)]

के. वि. बी. उण्णी, डैस्क अधिकारी

New Delhi, the 4th January, 1996

S.O. 310.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M.E.S. and their workmen, which was received by the Central Government on 27-12-95.

[No. L-14012/100/90-IR(DU)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, PANDU NAGAR, KANPUR

Industrial Dispute No. 127 of 1991

In the matter of dispute between :

Dori Lal s/o Sri Sughar Singh,
P.O. Madanpura,
District Agra.

AND

Garisson Engineer,
Kheria, M.E.S.
Agra.

AWARD

1. Central Government, Ministry of Labour, vide its notification No. L-14012/100/90-IR-D.U. dated 4-9-91, has referred the following dispute for adjudication to this Tribunal—

Whether the Garrison Engineer MES, Agra is justified in terminating the services of Sri Dori Lal w.e.f. 1-1-87 ? If not, what relief he is entitled to ?

2. The concerned workman Dori Lal in his claim statement has alleged that he has worked continuously from 20-4-83 to 31-12-86 with Garrison Engineer MES, Agra as a labour. Kishore Kohli, Saleem Khan and S. K. Dey were employed subsequent to him. They have been regularised whereas the concerned workman on his request for being regularised have been removed from service by order dated 1-1-87 which is illegal as there has been breach of section 25F and G of I.D. Act.

3. The opposite party has also filed written statement in which it is denied that the concerned workman had continuously worked. Instead during above period he has worked for 107 days. As he has not completed 180 days in a year or 240 days in two consecutive years he was not eligible for regularisation. No reason for removal from service have been given. Concerned workman has filed reply in which nothing new has been said.

4. In support of his case concerned workman has filed his affidavit.

5. The opposite party was afforded three opportunities to adduce evidence but in vain. The opposite party has also not filed papers to show that concerned workman has not worked continuously. As papers were in possession of opposite party they ought to have filed them to prove the case of the management. In its absence further adverse inference is to be drawn against them. Apart from this evidence of the concerned workman is reliable hence I have no hesitation in accepting it. In this way the case of the concerned workman is fully proved.

6. It is held that there has been breach of section 25F and 25G of I.D. Act.

7. Accordingly my award is that the termination of service of the concerned workman is illegal. However, because of belated reference it is further held that the concerned workman will be entitled to his back wages at the rate at which he was drawing at the time of his termination, from the date of reference.

8. Reference is answered accordingly.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 8 जनवरी, 1996

का. आ. 311.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार वेस्टन रेलवे के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बम्बई के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 5 जनवरी, 1996 को प्राप्त हुआ था।

[संख्या एल-41012/77/91 आई आर बी आई]

पी. जे. माईकल, डैस्क अधिकारी

New Delhi, the 8th January, 1996

S.O. 311.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Bombay No. 2 as shown in the Annexure in the industrial dispute between the employers in relation to the management of Western Railway, and their workman, which was received by the Central Government on 5-1-96.

[No. L-41012/77/91-IRBI]

P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, BOMBAY

Reference No. CGIT-2/47 of 1992

PRESENT :

Shri S. B. Panse, Presiding Officer

Employers in relation to the management of Western Railway, Bombay.

AND

Their Workmen.

APPEARANCES :

For the Employer : Mr. V. Narayanan, Advocate.

For the Workmen : Mr. M. B. Anchan, Advocate.

Bombay, the 22nd December, 1995

AWARD—PART-II

On 11-7-95 I passed Award Part-I on Order No. L-41012/77/91-IR(DU) dated 16-7-92, I came to the conclusion that the departmental Inquiry which was held against the worker was against the principles of natural justice. The parties were allowed to give evidence in the matter.

2. In short the case is that the worker Painter was charge sheeted by the management on the ground that he was absent on January 19th and 20th, 1989. He wanted to get two days sanction leave when he was asked to approach the sick line Foremans Office by Shri Jamnadas Mistry. He started abusing Shri Mistry with unbearable words in the name of his mother and sisters and tried to attack him. Shri P. R. Venkataraman immedaitely intervened and made him understand. In short the charge was of serious misconduct, abusing of senior supervisors.

3. The case of the worker was that he was not given an opportunity to defend himself and the domestic inquiry was against the principles of natural justice.

4. The management came with the case that the worker remained absent in the domestic inquiry and had proceeded with Ex-parte. According to it the domestic inquiry was as per the principles of natural justice and there is no violation.

5. Now I have to answer issue Nos. 2, 3 and 4 which are at Ex-12. The issues and my findings there on are as follows :

Issues	Findings
2. Did he further prove that the findings of the Inquiry Officer are perverse ?	No.
3. Whether the action of the mgt. of Western Railway, Bombay in terminating the services of Kaushal V. Painter is justified ?	No.
4. If not, to what relief he is entitled to ?	As per final order.

REASONS

6. The management was allowed to lead evidence to prove that its action which was taken against the worker was just and proper. It examined P. G. K. Nair (Ex-15), Personnel Officer of the Bombay Central Railway. It is pertinent to note that he affirmed on the basis of the record. But in categorical term admits the effect that in his presence the worker did not abuse the Mistry, the foreman. He also admits he does not know anything in respect of the inquiry except the record and that he does not know anything in respect of the incident. As against this Painter (Ex-17) the worker affirmed as per his statement of claim. Infact when issue No. 1 was answered in favour of the workmen the burden was on the management to prove its action to be just and proper. In

other words now the Tribunal sits as the inquiry officer and the management is bound to prove its charges before the Tribunal if it wants to justify its action.

7. The evidence which I have referred upon is not at all sufficient for coming to the conclusion that its action is justified.

8. Mistry, the foreman gave a complaint against the workman dated 20-1-89. He had not come before the Tribunal to affirm it. It appears that the action was initiated on his letter. Before the inquiry officer also he was not examined. There are five witnesses to the alleged incident namely :

(1) P. V. Venkataraman
(2) Radheyshyam R.
(3) Hardev Singh
(4) Shamsuddin
(5) Dharma Prasad

None of them came before the Tribunal to prove the incident and the misconduct of the workman. No reasons have come forward to show why these witnesses cannot be examined. As this is so one has to say that there is no iota of evidence against the workman by which it can be said to be he is guilty of the charges levied against him.

9. I have come to the conclusion that the worker had no opportunity to defend his case properly. He had further affirmed that the statement of witnesses were recorded in his absence. Even for the sake of argument if it is accepted that these statements are there on the record these witnesses should have come before the court to affirm to that effect only and the Learned Advocate for the worker would have cross-examined them. But nothing to that effect had taken place. Naturally it has to be said that the findings of the inquiry officer are not correct.

10. In the result the conclusion has to be drawn that the action of the management is not justified. As this is so the worker is entitled to all monetary and other reliefs.

11. The management tried to argue that the worker is not office bearer as he claimed and the inquiry which was initiated was not with bias mind. So far as whether he was the office bearer or not has nothing to do at this juncture. That would have been the fact, to be tried while deciding issue No. 1 which I have already done long back. For all these reasons I record my findings on the issues accordingly and pass the following Order :

ORDER

1. The action of the management of Western Railway, Bombay in terminating the services of Shri Kaushal V. Painter is not justified.

2. The management is directed to reinstate him in his original position immediately.

3. The management is directed to treat the worker in continuity in service.

4. The management is directed to make him full back wages within three months from today.

5. No order as to costs.

S. B. PANSE, Presiding Officer

नई दिल्ली 8 जनवरी, 1996

का. आ. 312—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कलकत्ता के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 5 जनवरी, 1996 को प्राप्त हुआ था।

[संख्या एल-12012/69/92-आई आर बी आई]

पी. जे. माईकल, डैस्क अधिकारी

New Delhi, the 8th January, 1996

S.O. 312.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure, in the industrial dispute between the employers in relation to the management of SBI and their workman, which was received by the Central Government on 5-1-1996.

[No. L-12012/69/92-IRBI]

P. J. MICHAEL, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Reference No. 46 of 1992

PARTIES :

Employers in relation to the Management of State Bank of India.

AND

Their Workmen.

PRESENT :

Mr. Justice K. C. Jagadeb Roy, Presiding Officer.

APPEARANCES :

On behalf of Management : Mr. K. Ghosh, Assistant Law Officer of the Bank.

On behalf of Workmen : Mr. N. N. Bhattacharjee, Assistant General Secretary of the Union.

STATE : West Bengal. INDUSTRY : Banking.

AWARD

By Order No. L-12012/69/92-IR.B.III dated 27-7-1992 the Central Government in exercise of its powers under section 10(1)(d) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of State Bank of India, Zonal Office, Calcutta, in deleting from the panel of names the name of Shri Jaynarayan Singh for permanent absorption in the bank was justified ? If not, to what relief the workman is entitled to ?"

2. Under the schedule of reference the only point for adjudication is if the deletion of the name of Shri Jaynarayan Singh from the panel of names meant for permanent absorption in the Bank was justified. In the written statement filed on behalf of the Union many hings are stated which may not have much of relevance in answering this question. As per the Written Statement of the Union, Jaynarayan Singh, the workman was temporarily appointed as a workman at the Ramrajatala Branch of the State Bank of India after fulfilling the eligibility criteria necessary for such appointment. He applied for the appointment pursuant to an advertisement dated 1st August, 1988 published in the English daily newspaper 'The Statesman' and was selected for such appointment after an interview. His name was subsequently enlisted and kept in the panel of names which was maintained with a view to permanent absorption in the Bank. His grievance is that without affording any opportunity to him, his name has been deleted from the list whereby he looses his chance of getting regular absorption in the Bank. In another petition filed by the Union dated 26-5-1995 this grievance of the workman was reiterated. The petition says that without any proper enquiry and without affording any opportunity to Shri Jayanarayan Singh, his name had been deleted from the waiting list of temporary employees meant for permanent absorption, which is arbitrary and vindictive and is contrary to the principle of natural justice.

3. In the written statement filed on behalf of the management it is admitted specifically in paragraph (vi) that the Bank had deleted the name of Shri Jaynarayan Singh from

the waiting list of temporary employees maintained for permanent absorption in future as the management was satisfied from an enquiry report that Shri Jaynarayan Singh was a person of doubtful integrity. This enquiry report which was the basis for the subjective satisfaction of the management was submitted by Shri L. K. Sen of the Vigilence Department of the State Bank of India who on an unanimous letter dated 21-7-1989 investigated and found that this Jaynarayan Singh who is the son of Mathura Singh, the Jamadar of Ramrajnala Branch, was given this temporary appointment for sprinkling water on Khas Khas by the order of the then Branch Manager and was allowed to continue to work for more than 90 days in such temporary work contrary to the direction of the Controlling Authority, which according to the Investigating Officer a favour shown to this workman by the then Branch Manager. This report has been marked Ext. M-1. The enquiry report of the Circle Vigilence Officer, marked Ext. M-4 shows that Shri Jaynarayan Singh worked altogether for 150 days during the years 1988 and 1989. In the said Ext. M-1 which was placed before the General Manager (Operations) by the Circle Vigilence Officer it also transpired to the authorities that the Branch Manager also sanctioned and disbursed a loan of about Rs. 5000 to this workman Jaynarayan Singh under the SEPUP' Scheme, 1987 and that loan amount had not been fully paid. This information obviously acted in the mind of the management resulted in the deletion of the name of Jaynarayan Singh from the panel of temporary employees for absorption in future.

4. Before the management decided to delete the name of Shri Jaynarayan Singh from the panel it was necessary that Sri Jaynarayan Singh should have been given an opportunity to answer the allegations raised against him but there is no assertions made in the written statement of the management that such opportunity has been given to him.

5. In the written statement of the workmen it was stated specifically that the contention of the Bank that he was defaulting borrower is denied. According to the workman it was duly repaid by him in October 1989. It is therefore very apparent that the workman could have given his own explanation to the allegations made out against him in the report of the Vigilence Officer as per Exts. M-1 and M-4 but he had not been given any opportunity in this regard and his name was dropped from the list.

6. No materials should be relied on against any one without giving him an opportunity to explain it. A reference may be made in this regard to Sur Enamel and Stamping Works Ltd. Vs. Their workmen reported in AIR 1963 SC 1914=1963(II) LLJ 367.

7. I accordingly hold that the deletion of the name of Sri Jaynarayan Singh from the list of temporary employees meant for permanent absorption in the Bank was not justified.

The reference is answered acordingly.

Dated, Calcutta.

The 21st December, 1995.

K. C. JAGADEB ROY, Presiding Officer

नई दिल्ली, 8 जनवरी, 1996

का. आ. 313.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बेतवा रिवरबोर्ड के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2 जनवरी, 1996 को प्राप्त हुआ था।

[संख्या एल-42012/15/91-आई आर (डी यू)]

के. वी. बि उन्नी, डैस्क अधिकारी

New Delhi, the 8th January, 1996

S.O. 313.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of Betwa River Board and their workmen, which was received by the Central Government on 2nd January, 1996

[No. L-42012/15/91-IR(DU)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA, PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, PANDU NAGAR DEOKI PALACE ROAD, KANPUR

Industrial Dispute No. 173 of 1991

In the matter of dispute between—

Anil Kumar Malviya,

General Secretary,

Workcharge Karamchari Sangh,

Rajghat, District Lalitpur.

AND

Chief Engineer,

Betwa River Board.

Rajghat Dam,

Nandanpura Jhansi.

AWARD

1. Central Government, Ministry of Labour, vide its notification No. 42012/15/91/I.R.D.U. dated 7th October, 1991 has referred the following dispute for adjudication to the Tribunal—

ANNEXURE

Anil Kumar Malviya	Date of appointment— 1-9-80
Jagatraj Niranjan	Date of appointment— 7-4-80
Mahendra Singh Sengar	Date of appointment—16-6-53

2. The Union on 13th December, 1995 moved an application stating that it does not want to prosecute the case any more before the Tribunal as such the case may be treated as withdrawn.

3. In view of the submissions made by the Union the reference is trented as withdrawn and consequently Union is entitled for no relief.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 8 जनवरी, 1996

का. आ. 314—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बेतवा रिवर बोर्ड के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2 जनवरी, 1996 को प्राप्त हुआ था।

[संख्या एल-42012/14/91-आई आर (डीयू)]

के. वि. बी. उन्नी, डैस्क अधिकारी

New Delhi, the 8th January, 1996

S.O. 314.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of Betwa River Board and their workmen, which was received by the Central Government on 2nd January, 1996.

[No. L-42012/14/91-IR(DU)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, PANDU NAGAR,

Industrial Dispute No. 172 of 1991

In the matter of dispute between :

Anil Kumar Malviya,

General Secretary,

Workcharged Karamchari Sangh.

Rajghat Lalitpur.

AND

Chief Engineer,

Betwa River Roard,

Rajghat Dam,

Nandanpura Jhansi.

AWARD

1. Central Government, Ministry of Labour, New Delhi, vide its notification No. L-42012/14/91-I.R.D.U. dated 7th October, 1991 has referred the following dispute for adjudication to this Tribunal—

Whether the demand of the Union to regularise the workmen as per Annexure A against their post with retrospective effect from the date of their appointment and also promotion with fringe benefit is justified ? If not, to what relief the workmen are entitled ?

ANNEXURE-A

Kailash Narain Date of appointment—26 7-78

Subhash Chaturvedi Date of appointment 22-4-80

2. The Union on 13th December, 1995 moved an application stating that it does not want to prosecute the case any more before the Tribunal as such the case may be treated as withdrawn.

3. In view of the submissions made by the Union the reference is treated as withdrawn and consequently Union is entitled for no relief.

B. K. SRIVASTAVA, Presiding Officer

Dated : 26-12-1995.

नई दिल्ली 8 जनवरी, 1996

का. आ. 315——औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूरदर्शन केन्द्र के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2 जनवरी, 1996 को प्राप्त हुआ था।

[संख्या एल-42012/89/91 आई आर (डी यू)]

के. वि. बी. उन्नी, डैस्क अधिकारी

New Delhi, the 8th January, 1996

S.O. 315.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of Doordarshan Kendra and their workmen, which was received by the Central Government on 2nd January 1996.

[No. L-42012/89/91-IR(DU)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, PANDU NAGAR,

Industrial Dispute No. 133 of 1992

In the matter of dispute between :

Jagbir Singh,
S/o Malkhan Singh,
Village & Post Kisauli,
District Bulandshahar.

AND

The Station Engineer,
Doordarshan Kendra (Maintenance Centre),
Circuit House Annexe,
Bareilly.

AWARD

1. Central Government, Ministry of Labour, vide its notification No. L-42012/89/91-I.R.(DU) dated 16th November, 1992 has referred the following dispute for adjudication to this Tribunal—

Whether the action of the management of Doordarshan Kendra (Maintenance Centre) Bareilly in terminating the services of Sri Jagbir Singh, w.e.f. 2nd February, 1990 is legal and justified ? If not, what relief the workman is entitled to ?

2. It is alleged that the concerned workman was appointed as helper on 1st September, 1989. The services of the concerned workman were terminated orally and after his termination management appointed fresh hand. The management contravened the provisions of Sec. 25-H and 25-G of I.D. Act.

3 Management in its reply alleged that concerned workman was engaged on contract basis at the post of Mali from 1st September, 1989 to 30th November, 1989. It is further alleged that Doordarshan Kendra being a Central Government Department, therefore, jurisdiction of Tribunal is denied.

4. In support of his case the concerned workman has filed his affidavit but did not produce himself before the Tribunal for his cross-examination. Being so the management also did not adduce any evidence in the case.

5. It therefore, appears that the workman is not interested in prosecuting his case as such the reference is answered in affirmative for want of proof. Consequently he is entitled for any relief.

6. Reference is answered accordingly.

Dated : 26-12-1995.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 8 जनवरी, 1996

का. आ. 316—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. भारत कोकिंग कोल लि. की बांपतीमान कौलियरी के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में, केन्द्रीय सरकार औद्योगिक अधिकरण (सं. 2) धनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-1-96 को प्राप्त हुआ था।

[संख्या – एल्– 20012/332/92– आई आर (कोल –1]

राजा लाल, डैस्क अधिकारी

New Delhi, the 8th January, 1996

S.O. 316.—In pursuance of Section 17 of the Industrial Disputes Act, 1947) (14 of 1947), the Central Government hereby publishes the award of the Central Government In-

dustrial Tribunal (No. 2), Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Basantimata Colliery of M/s. Bharat Coking Coal Ltd., and their workmen, which was received by the Central Government on 4th January, 1996.

[No. L-20012/352/92-IR(Coal-I)]

RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT :

Shri D. K. Nayak, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

Reference No. 193 of 1993

PARTIES :

Employers in relation to the management of BCCL

AND

Their workmen.

APPEARANCES :

On behalf of the workmen—None.

On behalf of the employers—Shri B. Joshi, Advocate.

STATE : Bihar. INDUSTRY : Coal.

Dhanbad, the 28th December, 1995

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012(332) 92-I.R. (Coal-I), dated. the 3rd/9th November, 1993.

SCHEDULE

"Whether the action of the management of M/s. Bharat Coking Coal Ltd., Area No. XII in relation to Basantimata Colliery in dismissing Shri Gaurunga Bauri, Badli Loader w.e.f. 8th January, 1990 is justified ? If not, to what relief the concerned workman is entitled ?"

2. Pursuant to the aforesaid reference workmen filed the W.S. on 14th February, 1994 and the next date for fixed W.S. of the management and for the same a notice was issued to the management. But no W.S. was filed by the management on the other hand a petition was filed by the learned Advocate Mr. Joshi along with a copy of the settlement between the management and the sponsoring union over this reference where the parties entered into the settlement according to the terms mentioned therein. It is also stated in the petition filed by the management that they do not want to proceed any more as the terms of the settlement have been implemented and there is no case at present.

It is a fact that no step appears to be taken from the side of the workmen. So on perusal of the settlement entered between the parties and as it is stated in the petition filed by the management under the signature of Mr. Joshi, learned Advocate for the management and also considering his submission in the open Court let the case be disposed off as there is no dispute in view of the settlement entered between the parties and implemented by the management in the meantime An award is passed accordingly considering that there is no dispute between the parties at present.

This is my Award.

D. K. NAYAK, Presiding Officer

नई दिल्ली, 8 जनवरी, 1996

का. आ. 317.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स भारत कोकिंग कोल लि. की निचितपुर कोलियरी के प्रबन्धतंत्र के संबद्धनियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, (सं. 2) धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-1-96 को प्राप्त हुआ था।

[संख्या एल-24012(215)/86-डी 4 (बी)/आई आर (कोल-I)]

राजा लाल, डैस्क अधिकारी

New Delhi, the 8th January, 1996

S.O. 317.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, (No. 2) Dhanbad as shown in the Annexure in the Industrial Dispute beween the employers in relation to the management of of Nichitpur Colliery of M|s. Bharat Coking Coal Ltd. and their workmen, which was received by the Central Government on 4-1-96.

[No. L-24012(215)|86.D.IV(B)|I.R.(Coal-I)]

RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUAL (NO. 2) AT DHANBAD

PRESENT :

Shri D. K. Nayak, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

REEFRENCE No. 213 OF 1987

PARTIES :

Employers in relation to the management of Nichitpur Colliery of M|s. B.C.C.L. and their workmen.

APPEARANCES :

On behalf of the workmen : Shri D. Mukherjee, Secretary, Bihar Collery Kamgar Unon.

On behalf of the employers : Shri B. Joshi, Advocate.

STATE : Bihar. INDUSTRY : Coal.

Dated, Dhanbal, the 29th December 1995

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on *them* under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to the Tribunal for adjudication vide their Order No. L-24012(215)| 86-D.IV(B), dated, the 23rd February, 1987.

SCHEDULE

"Whether the action of the management of Nichitpur Colliery of Sijua Area V M|s. Bharat Coking Coal Ltd. P.O. Bansjora, Distt, Dhanbad in demoting Sri Chaitu Mahato, Crane Operator in Excavation Category B to Crade Operator Helper in Excavation Category E is justified ? If not, to what relief the workman concerned is entitled ?"

2. To meet the said reference the workman filed W.S. stating inter alia that he was a permanent crane Operator in Execavation Category B since long past having no adverse report in his service life. As he is the active member of Bihar Colliery Kamgar Union the local management was displeased and prejudiced against him for such envolment. In order to victimise the said workman and also to terrorise other members of the said union this chargesheet dt. 16-1-86

with false allegation that he made intentional delay in performing the job on 15-1-86 when he was entrusted with his [illegible] duty and he left the place without completing the job flouting the order of Shri N.M. Singh. According he was found to cause misconduct as mis-quoted under para 18(1)(f) of the Model Standing Orders applicable to the Coal Industry. In reply of the chargesheet the management was not satisfied and a domestic enquiry was held in which this workman was not given full opportunity to defend him and holding him to be liable for the misconduct attracting the provision again mis-quoted rule 18(1)(f) of the Model Standing Orders. He was demoted from Executive Cat. B to Excavation Cat. E as Operator Helper. Further case of the workman is that a letter of demotion dt. 31-3-86 demoting him to Cat. B to Excavation Cat. E as Crude Operator to Helper is arbitrary, illegal, and unjustified and against the principle of natural justice. Thereby the concerned workman through the sponsoring union made several representations before the management for withdrawal of such arbitrary punishment. As no relief was obtained the union raised Industrial dispute before the ALC(C) for conciliation expecting amicable conciliation but it ended in failure due to adamant attitude of the management. Thereafter the present reference arose. Now prayer of the concerned workman is to withdraw the arbitrary and illegal demotion order dt. 31-3-86 and to allow him for work as Crane Operator in Ex. Category B with effect from the date of demotion with full back wages and other consequential reliefs and benefits.

3. In reply to the W.S. of the workmen, W.S.-cum-rejoinder has been filed by the management stating that the concerned workman Chaitu Mahato obviously was appointed as Crane Operator at Nichitpur Open Cast Project. On 15-1-86 he was directed by the Agent of Nichitpur Colliery to take the crane under his charge for lifting the pay loader of Angarpathra Colliery which was tilted due to certain manovering defect. Though the concerned workman visited that place and was provided with the required persons and materials to perform the job he remained idle and passed time without performing the duty for which he was entrusted with practically ignoring the Agent of Angarpathra Colliery and the matter was referred to the Agent of Nichitpur Colliery who visited the spot and observed the attitude of the said workman and he was constrained to suspend the operation and advised this concerned workman to leave the job and on 16-1-86 in the first shift another person was deputed who lifted the said tilted pay loaders within 10 minutes and this delay was intentional leading to the misconduct for negligence in his duty. Accordig he was issued with a chargesheet dt. 16-1-86 for his intentional delay in the operational for tilted pay loaders and his above act constituted misconduct under clause 1(k) of Order 17(1) of the Model Standing Orders. In enquiry was stated after receipt of the reply of the chargesheet and he participated in the enquiry and the enquiry officer found hi mguilty and he was demoted to Ex. Cat. E from Ex. Cat. B i.e. Crane Operator to Crane Operator Helper and that order was justified.

4. In the rejoinder the allegation made in para 1, 2, 3, 4 in the W.S. filed by the workmen were denied and it is stated that it was false to state that the chargesheet was the out come of grudge for his attachment to the said union. Actually he was irresponsible in his work and it was unsafe to depute him in any urgent and important job and so the said punishment was awarded.

5. There was an objection about the fairness and propriety of the enquiry but by order No. 63 dt. 8-3-95 it was held that as it involves the main question, so the matter was kept open for consideration at the time of final hearing.

6. At the time of final hearing one witness has been examined from the side of the management who is Senior Personnel Officer of Nichitpur Colliery at the relevant time. He conducted the domestic enquiry against the concerned workman Chaitu Mahato. According to him the chargesheet was issued under the signature of K.C. Sood, the Mines Superintendent and Agent of the Colliery and he was also Superintendent of Nichitpur Colliery ad the said chargesheet has been marked as Ex. M-1 and the reply of the concerned workman is Ext. M-2 and appointment as Enquiry Officer dt. 20-1-86 is Ext. M-3. He has deposed that the concerned workman participated in the enquiry and he was given full opportunity to cross-examine the managements witness and to adduce his evidence. According to him the concerned workman also gave his statement which was read over and explained to him and he put his signature knowing the contents of the same and admitting to be correct. The enquiry proceeding is marked Ex. M-4 and the Enquiry Report is Ext. M-5. It further appears that the concerned workman never raised any objection about the enquiry. Thereafter the submitted the report which was commented by the Superintendent of Mines and the report of Sri Sood is separately marked as Ext. M-6 and the order was passed confirming the decision and finding of the enquiry proceeding by demoting the concerned workman from Excavation Cat. B to Excavation Cat. E on 31-3-86 under the signature of Agent, Nichitpur Open Cast Project. The complaint dt. 16-1-86 is marked Ext. M-8. The letter issued by the Enquiry Officer directing the concerned workman to attend the Enquiry Proceeding marked Ext. M-9 and the letter issued to the Sr. Personnel Officer is marked. Ext. M-9(1) and the letter issued by the Superintendent fixing his basic pay in Excavation is marked Ext. M-10. He was cross-examined at length and it is not disputed that the concerned workman was entrusted with the job. He was cross-examined about the procedures and the principles laid down under the Model Standing Orders. His answer is that he performed the enquiry in accordance with the law and his findings are based on law and facts.

7. The concerned workman was also examined on oath. According to him enquiry was exparte and one sided. But he has stated that this fact was not suggested to the witness though he was present when the management witness was examined.

8. I have carefully perused the entire enquiry record.

9. No doubt, this concerned workman was deputed for performing certain duty at Angarpathra Colliery for operating crane to lift the tilted pay loader and according to the management he made delay ignoring the superior officers and that has been supported by several witnesses adduced by the management but for the workman none came forward to say that the charges levelled against him are false one.

10. Therefore weighing the evidence of both the parties at the time of enquiry I do not find any irregularity nor I find that enquiry was held in any illegal and improper manner. So there is every reason to accept the version of the management witnesses to uphold the finding of the Enquiry Officer that he caused wiful damage of the property of the employer by malingering or slowing down the work.

11. It is also clear from the Standing Orders vide clause 17(i)(f)(k) where those two acts are misconduct within the ambit of the Model Standing Orders.

12. Be that as it may, Under Section 11A the Labour Courts or Tribunal have ample power to assess the punishment given for any charges to any workman. I have carefully gone through the enquiry proceeding and the evidence on record not where I find that ever this concerned workman was charged for any neglect of duty or this type of allegation before hand.

13. Therefore, even if it is accepted that the charges levelled against the concerned workman has been proved beyond all reasonable doubts then we should not be so harsh in imposing the punishment, so that it appears to be done having no balance as regards imposition of punishment.

14. The workman who is in service for a pretty long time if he ever commits any such act though it appears to be causing of wilful damage to the work in progress or slowing down the work, in my opinion, demoting him permanently from Excavation Cat. B to Excavation Cat. E is nothing but an excessive punishment having no balance in the matter of imposition of punishment and that cannot be accepted by any Court of law nor it is permitted considering the point of natural justice.

15. But I cannot ignore the fact that if a workman be allowed to flout the order of superior and no punitive measure is initiated against him irrespective of his position in

the sponsoring union, then indiscipline will prevail in the adminitration ad the industry cannot run smoothly.

16. The union is not only to claim the demand of their workmen but also they are to see whether the administration runs smoothly without causing or hampering the interest of the workmen. Therefore, though I upheld the finding of the enquiry proceeding that he caused wilful damage to work in progress or to property of the employers and malingering or slowing down his work his punishment requires to be interfered by diminishing the punishment to certain extent.

17. Thus the reference is disposed off in the following terms :—

"The action of the management of Nichitpur Colliery of Colliery of Sijua Area of M|s. BCCL P.O. Bansjora Distt. Dhanbad in demoting Sri Chaitu Mahato, Crane Operator in Excavation Category B to Crane Operator Helper in Excavation Category E forever is not justified though he should be subjected to certain punishment. So the punishment. So the punishment given to him is hereby modified and he should be deemed to work as Crane Operator in Excavation Category B from 1-1-91 keeping the decision of demoting him to Excavation Category E before that date undisturbed. It is further ordered that the management is to regularise his services treating him to be Crane Operator in Excavation Category B on and from 1-1-91 again as he was giving him seniority in the said post from then and also with difference of wages and other consequential reliefs thereto from that time forward and thus the reference is disposed off in the observation and finding made above and giving relief in the manner as stated earlier. The management is directed to implement the Award within one month from the date of publication of the Award."

This is my Award.

D. K. NAYAK, Presiding Officer

नई दिल्ली, 8 जनवरी, 1996

का. आ. 318.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स भारत कोकिंग कोल लि. की गुर्राडीह कोलियरी के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में, केन्द्रीय सरकार औद्योगिक अधिकरण, (सं. 2) धनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-1-1996 को प्राप्त हुआ था।

[संख्या एल-20012 (362)/92-आई आर (कोल-I)]

राजा लाल, डैस्क अधिकारी

New Delhi, the 8th January, 1996

S.O. 318.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, (No. 2) Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Mudidih Colliery of M|s Bharat Coking Coal Ltd. and their workmen, which was received by the Central Government on 4-1-96.

[No. L-20012(362)|92-IR (Coal-I)]
RAJA LAL, Desk Officer.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT

Shri D. K. Nayak,

Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D. Act., 1947

Reference No. 83 of 1993

PARTIES :

Employers in relation to the management of Mudidih Colliery of M|s. B.C.C.L. and their workmen.

APPEARANCES :

On behalf of the workmen : Shri D. Mukherjee, Secretary, Bihar Colliery Kamgar Union.

Secretary, Union.

On behalf of the employers : Shri H. Nath, Advocate.

State : Bihar. Industry : Coal.

Dated, Dhanbad, the 28th December, 1995

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012(362)|92-I.R. (Coal-I), date, the 5th July, 1993.

SCHEDULE

"Whether the demand of Bihar Colliery Kamgar Union for reinstatement with full back wages to Shri Batul Chandra Tiwari Weigh-Bridge Clerk in Mudidih Colliery is justified ? If yes, to what relief the workman is entitled to ?"

2. Pursuant to the said reference the workman in his W.S. has stated inter alia that he was working as Weigh Bridge Clerk in Mudidih Colliery since long with unblimished record of service. It is stated further that the management issued a false and frivolous chargesheet dt. 5/6-11-1974 with the allegation that on 4-11-74 about 5.45 P.M. while weighing Truck BHR 7185 weight was shown as 11460 tonne in place of 20460 and in the same manner on the same date at about 5.45 P.M. the weight of Truck No. BRW 9693 was shown as 19400 tonnes instead of 20400 tonnes which were found on re-weightment of both the trucks subsequently. For that a show cause notice was issued for showing cause within 48 hours. But as the show cause was not satisfied an enquiry took place and on enquiry he was found to be guilty. In the meantime he was suspended on receipt of his reply. The further case of the workmen is that the chargesheet was issued by an unauthorised person and the appointment of enquiry officer was not in accordance with the law and the proceeding in its enterity was vitiated being prejudiced an biased and in violation of law. This workman was not given proper opportunity to cross-examine the management's witness. The further allegation is that Shri K. G. Rawal, Sub-Area Manager had no authority to issue chargesheet and practically in the enquiry everything were perverse as the chargesheet was issued by Shri Rawal, the enquiry officer was apointed by him and also he happened to be the main witness in the enquiry and he himself dismissed the concerned workman and thereby the enquiry is vitiated for various reasons. It is further stated in the W.S. that an Industrial dispute was raised before the ALC (C) Dhanbad challenging the said dismissal order order but it was not considered nor any reference was made by the Govt. of India through Ministry of Labour holding that the enquiry was conducting fairly and properly. Again the union raised Industrial Dispute before the ALC (C) for conciliation and submitted before the Govt. thereafter for reference with various ground supported by law points and ultimately this reference has been made. So the workmen prays for reinstatement with full back wages.

3. The management has led the W.S. cum-reioinder stating that on 6-8-90 the Secretary of Bihar Colliery Kamgar Union (hereafter referred to as sponsoring union) raised an industrial dispute before the ALC(C) Dhanbad alleging the order of dismissal of Shri Batul Chandra Tiwari the concerned workman to be arbitrary and illegal. On receipt of such dispute the ALC(C) Dhanbad addressed to the General Manager, Sijua

Area by letter dated 14-12-90 to the effect that the same dispute was raised by the concerned workman in the year 1979 which was rejected by the Ministry vide order No. L-20012/561/79-D.IIIA dated 22-6-79.

4. Further case of the management is that on 4-11-94 at 5.45 P.M. he showed the weight of two trucks BHR 7185 and BRW 9695 as 19460 tonnes and 19400 tonnes instead of 20460 tonnes and 20400 tonnes respectively. On detection after re-weightment of those two trucks he fraud perpuated by the said workman dishonestly revealed and he was dealt with under Clause 17(i)(a) of the Standing Orders of the company applicable to him an a chargesheet was issued bearing No. BCCL(AS-VIII 14,13-4067 dt. 5|6 November, 1974 by the Sub-Area Manager with a direction to show cause why disciplinary action should not be taken against him under the said standing orders. As his reply could not satisfy the management an enquiry proceeding was initiated and after full enquiry giving full opportunity to the concerned workman he was found guilty during the period of his suspension as ordered earlier and he was dismissed from the company with effect from 26-2-1975 vide letter No. BCCL/SA|VIII|4|14-704, dated 24th February, 1975. It is stated further that the enquiry took place properly and his prayer for reference after conciliation proceeding before the ALC(C) was rejected by the Ministry of Labour vide order dt. 22-6-1979 and since then he remained silent upto 6-8-90 and thereafter on the said date he raised the dispute afresh without having any proper reason. Thus he has taken an opportunity of raising this dispute after a lapse of more than 10 years which is absolutely prohibited in law and the said fact itself is enought to dismiss the prayer of the concerned workmen

5. In the rejoinder it is stated that the facts stated in para 1 to 3, 5 to 9, 13 to 16 are all false and he was wrightly dismissed and the enquiry took place properly and on enquiry he was found to be guilty of gross misconduct and proper punishment of dismissal was awarded to him. It is neither harsh nor disproportionate and if this type of offence be ignored and encouraged that will be a gross loss to the management and thereby finally it is praved that the concerned workman is not entitled to get any relief sought for.

6. In the rejounder the workman has practically re-agitated the points already urged before hand stating further that the charges levelled against him was baseless nor it constitute misconduct. Thereby the order of dismissal was against law. It is further satted as the concerned workman could not afford expenditure of litigation so he remained silent and after reference now he is entitled to get the relief as sought for.

7. In the instant case no record of enquiry proceeding has been produced and the management has informed this Tribunal that the said record is not traceable.

8. In this context let met refer the order No. 20 dated 29-6-95 from where I find that the learned Advocate for the workman submitted for a direction to the management to file the enquiry proceeding record in order to meet further steps and to adjudicate whether the enquiry was fair and proper in view of the W.S. filed by the management. In the said order itself Mr. Nath learned Advocate for the managemen submitted the enquiry to be legal, proper and fair and under that However, the learned Advocate representing the workman admitted the enquiry to be legal, proper and fair and under that circumstances the case was fixed for hearing of argument.

9. Ultimately the enquiry proceeding record has not been filed.

10. No doubt this debarred the workmen as well as this Tribunal to see what type of enquiry actually took place.

11. But a point which we cannot over look that the workman has admitted the enquiry proceeding to be fair and proner. Only question which requires for consideration is whether the factual aspect as regards charge was correct as levelled by the management against the concerned workmen.

12. It is an admitted position that a chargesheet was issued alleging that the concerned workman being a Weigh Bridge clerk in Mudidih Colliery on 4-11-71 was on duty and he was levelled with charge that he showed the weight of two trucks BHR 7184 and BRW 9693 at 5.45 P.M. respectively as 19460 tonnes and 19400 tonnes in place of 20460 tonnes and 20400 tonnes respectively.

13. This fact could have been challenged by adducing evidence without admitting the enquiry to be fair and proper. Admission of enquiry to be fair and proper means that except the violation of statute, if any all other facts were accepted and the said inference cannot be out of the way.

14. Another point which was urged that Mr. Rawal dismissed the concerned workman from the service with effect from 26-2-75 on the basis of the complaint of the chargesheet of himself. It is also submitted in the W.S. that the enquiry officer was also pointed by him. Be that as it may there was an enquiry, evidence was adduced and it is the case of the management that a chance was given to the concerned workman to defend his case and he availed of such chance and thereafter took part into the enquiry, it is too late to urge that the enquiry was illegal specially when legality, fairness and propriety of the domestic enquiry has been admitted in course of this hearing also.

15. In view of such facts the learned Advocate appearing for the workman practically could not argue much upon this point specially in view of the admission of the enquiry to be legal fair and proper as it is noted in order No. 20 of 29-6-95.

16. In this context another point which gives a death blow to the workman for getting his redress if any.

17. It is an admitted position that he was dismissed on 26-2-75 and thereafter the matter was referred to the ALC(C), Dhanbad by the then sponsoring union and the Ministry rejected to make any reference which is not denied by the management and it is stated in the W.S. of the management referring the order No. L-20012|51|79-D.IIIA dt. 22-6-79.

18. It is curious enough that this workman in the year 1979 when the Ministry rejected to make any reference about this order of dismissal, remained silent and he woke up from his sleep in the year 1990 and again approached the ALC(C), Dhanbad through the Secretary, Bihar Colliery Kamgar Union raising this industrial dispute. Thereafter, I have no hesitation to hold that this concerned workman remained mum in between 1979 and 1990 which is obviously more or less 10 years and from the facts and circumstances I do not find any reason which prevented him to move the appropriate forum or to take shelter of the Hon'ble High Court Court if there was any injustice to him and thereby I canont wipe out the argument of the management that the claim is barred on the ground of stalement. In this context let me refer a recent decision of the Hon'ble Patna High Court where His Lordship relying upon Supreme Court decision has come to the finding as staed below.

19. In a case law reported in 1994 BBCJ 498 Patna High Court relating to C.W.J.C. 1250 and 1760 of 1988 (R) between Secretary, Barauni Tel Shodhak Mazdor Union, Begusarai. Vrs—P.O. Central Govt. Industrial Tribunal No. 2, Dhanbad and others, and between M|s. Indian Oil Corporation Ltd.—vers—Union of India and othetrs). His Lordship relying upon decision of the Hon'ble Supreme Court including the reported case in AIR 1959 SC 1217 (between Shalimar Works Ltd.-versus-their workmen) and other case opined that over stale claim should be discouraged unless satisfactory explanation is provided with It has been opined further in catena of decisions on this point that though the period of limination is not prescribed in respect of the industrial claim, the Industrial Tribunal or Labour Court should discourage overstale claim unless satisfactory explanation thereof is furnished.

20. In the intant case I do not find any satisfactory explanation from the side of the workman why he remained silent in between 1979 and 1990 of course it is stated in para-14 of his rejoinder that he could not proceed further while the Ministry rejected the reference in the year 1979 as he could not afford expenditure.

21. I do not find this ground as cogent one as there is no question affording expenditure from his side when he is under the roof of the sponsoring union as the sponsoring union is for the workers when they find any proper cause to stand by their side.

22. Therefore, as I find no cogent reason for condoning or giving explanation of such delay I am of the opinion that this claim is barred on the principle of overstale.

22. In view of the discussions made above I find no substance in the contention of the workman nor I find any ground to award any relief to the concerned workman and ultimately the reference is answered in negative holding that the demand of the union for reinstatement with full back wages of Batul Chandra Tewari, weigh Bridge Clerk in Mudidih Colliery is ont justified and the concerned workmon is not entitled to get any relief in this reference.

This is my Award.

D. K. NAYAK, Presiding Officer

नई दिल्ली, 9 जनवरी, 1996

का. आ. 319.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महानगर टेलीफोन निगम लि., के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बम्बई नं. 2 के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-1-96 को प्राप्त हुआ था।

[संख्या एल – 40012/65/90 – आई आर (डीयू)]

के. वि. बी. उण्णी, डैस्क अधिकारी

New Delhi, the 9th January, 1996

S.O.319.—In pursuance of Section 17 of the Industrial Disputes Act. 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Bombay No. 2 as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of MTNL and their workmen, which was received by the Central Government on 8-1-96.

[No. L-40012/2/65/90-IR(DU)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT :

Shri S. B. Panse, Presiding Officer.

REFERENCE NO. CGIT-2/9 OF 1991

Employers in relation to the management of Mahanagar Telephone Nigam Ltd.

AND

Their Workmen

APPEARANCES :

For the employer : Ms. S. N. Mhatre, Advocate.
For the workmen : Mr. M. B. Anchan Advocate

Bombay, dated 21st December, 1995

AWARD

On 31-12-91 Government of India, Ministry of Labour by its order No. L-40012/65/90-IR(DU) dtd. 4-2-91, referred the following Industrial Dispute this Tribunal for adjudication.

"Whether the management of M.T.N.L, Bombay in terminating the services of Smt. Lata Gopinath Ugale, a Bearer in their Departmental canteen w.e.f. 7-9-88 is justified ? If not, to what relief the concerned workman is entitled to ?"

2. Smt. Lata Gopinath Ugale the workman joined the services of M.T.N.L. as an Aya on casual basis from May 1985. She was engaged on daily wage of Rs. 12/-. She continued the said post till 21-10-85 without any break in service. Thereafter she was appointed as the bearer in Central Telephone Exchange Departmental Canteen of the M.T.N.L. from 1-11-85, on a monthly wage of Rs. 732/-. She was not issued an appointment letter at that time. She worked continuously without any break in service till her services were terminated on 7-9-88.

3. In the beginning the worker was paid on the basis of the Fourth Pay Commission. She was getting Rs. 1,003/- per month. From April 1988 onwards the management reduced her wages and offered her Rs. 750/- per month. She protested and did not accept the wages from 7-9-88. Being aggrieved by her action the management terminated her services w.e.f. 7-9-88.

4. The workman contended that when her services were retrenched the management did not comply with section 25F and 25N of the Industrial Disputes Act of 1947. In other words she was not given three months notice before retrenchment nor necessary permission was sought from the competent Government before issuing the retrenchment order. It is further pleaded that she was not paid retrenchment compensation also. In fact looking to the requirements of the canteen there was no need to retrench the worker. It is averred as the retrenchment was illegal and unjustified she is deemed to be in continuous service and entitled to full back wages

5. The management resisted the claim by its written statement Ex-'4'. It is averred that no union/Respondent was recognized by the Departmental Canteen employee as per the letter dtd. 24-11-88 by Welfare Officer M.T.N.L. Bombay It is submitted that the worker was engaged on Casual Labour basis. It is averred that services of Lata Ugale were terminated w.e.f. 7-9-88 after giving her proper lawful notice. It is averred that the said notice was given as per the Bi-Laws No. 27(II) (Blue Book) of the Departmental Canteen issued by the Directors of Canteen.

6. The management contended that all attempts were made to get subsidies for the worker from the welfare section/department and to regularise her services in the canteen as the permanent employee. But the management did not approve it. The management was subsequently ordered by the General Manager M.T.N.L. Bombay as there was a ban on employment on any more staff at the Central Governments office or any of its establishments. It is further submitted that her termination was a matter of course and there was no victimisation at all. It is averred that she was given two months notice.

7. It is averred that her termination was just, legal and proper. Under such circumstances it is submitted that the workman is not entitled to any reliefs as claimed.

8. The issues are framed at Ex-'5'. The issues and my fidings there on are as follows :

Issues	Findings
1. Whether no notice was given to the workman (Lady) before her services were terminated by the management ?	No legal notice was given.
2. Whether she was retrenched from the service because of the ban on employment of any more staff ?	No
3 Whether the action of mgt. of MTNL, Bombay in terminating the services of Smt. Lata Gopinath Ugale, a Bearer in their Departmental canteen w.e.f. 7-9-88 is justified ?	No
4. If not, to what relief the concerned workman is entitled	As per final Order.
5 What Award	As per final Order

REASONS

9. Smt Lata Gopinath Ugale (Ex-14), Ratnakar Shetty (Ex-15) the witnesses for the worker and A. K. Aralimatti (Ex-18) corroborates each other on the point that prior to the appointment of the worker in Departmental Canteen of the Central Telephone Exchange M.T.N.L. as the lady bearer

she was working as an Aya in the Central Telephone Exchange on daily wages. As per the worker and her witnesses she was engaged from May 1985. According to management the month is different. It is not in dispute that she worked in that capacity till 31-10-85. It is also not in dispute that she served till 7-9-88. Aralimatti (Ex-18) affirmed that Lata the worker had not attended more than 240 days between April 1985 to March 1986. But she accepts the fact that from April 1986 to March 1987 and from April' 87 to March 1988 and from April 1988 to 6th September 1988 she was present. She was continuously working in the said departmental canteen as the lady bearer. According to him she refused to accept the salary from April '88 to 6th September 1988. The case which is tried to be made out by the worker is that as she was paid less salary i.e. Rs. 750/- in place of Rs. 1003/- which was granted as the Fourth Pay Commission she refused it. As she refused to accept that amount, her services were terminated. I will discuss the points of termination little later. But from the testimony of Lata, Ratnakar, Aralimatti it is very clear that she was working for more than 240 days continuously for a period of one year preceding the date to which the calculation has to be made. She is to be called as in continuous service. This criteria is contemplated under section 25B of the I.D. Act of 1947. It is complied.

10. Section 25F of the Industrial Disputes Act of 1947 deals with conditions precedent to retrenchment of the worker. It states that any workmen employed in any Industry who is been in continuous service for not less than one year or under the employment shall be retrenched by that employee only.

(a) Giving the notice and the reasons for retrenchment or has been paid in view of such notice wages for the period of the notice.

(b) Retrenchment Compensation.

(c) Notice in the prescribed manner to be served on the appropriate Government.

11. It is also argued on behalf of the Union that there is non compliance of Section 25N of the I.D. Act which deals with condition precedent to retrenchment of workmen. Chapter V. B. deals with certain Industrial establishments where more than 100 workers on a particular day. It is not in dispute that in the M.T.N.L.'s Central Telephone Exchange there were more than 100 employees working at a relevant time. According to Union the canteen is part and parcel of the same exchange. It is therefore section 25N of Industrial Disputes Act comes into play. I find substance in it.

12. Arilamatti admits that the workmen was not paid any compensation when her services were terminated. Section 25F requires compensation to be paid to the worker when there is a retrenchment. As that is not done it is a non-compliance of the section and the action becomes void. It is well settled law that the compliance which is expected to be carried out under section 25F are mandatory. It's non-compliance vitiates the termination.

13. The witness for the management accepts that three months notice or payment in lieu of the same notice was not given to the workmen. The notice which was given to the worker dtd 28-6-88 is at Ex-9/1. It is clearly mentioned in the said notice that after two months of receipt of the said notice her services will not be entertained. The reasons are given in the said notice why her services were terminated. It can be seen that the notice did not comply the requirements contemplated u/s. 25N of the I.D. Act.

14. Section 25N 2(B) contemplates that no worker should be retrenched unless the prior permission of the appropriate Government or of such authority as may be specified by that Government notification under the official Gazette, has been obtained on the application made in this behalf. The management had not obtained necessary permission for such a retrenchment. From the evidence it appears that the management wants to rely upon the instructions issued by the Government in respect of the recruitments. These letters are at Ex-9/2 3&4. It can be seen that the subject referred to in these letters relates to ban on creation/filling of post in the non-statutory registered department/co-operative canteen/Tiffin rules located in Central Government Offices. Letter (Ex-9/2) is dtd. 12-1-92. Obviously it is after the retrenchment of the worker. It is tried to argue on behalf of the union, it is therefore it has no meaning. But after carefully reading of this letter it refers to the earlier letters issued by the Ministry and the last date mentioned in this letters dated 10-9-85. It appears that the management had taken action on the basis of that letter and not on the letter dtd. 30-1-92. But even then this letters will not have any force as far as the existing workers are concerned. I will relates to the ban of recruitment. It has nothing to do with persons who are already in continuous service. In a notice which was given to the worker it is not mentioned that her services were required to be terminated in view of these circulars. But what is mentioned in that notice is that the canteen is running in loss and it has become difficult for the management to pay the salary to casual employees. It is also mentioned that their proposal to regularise her services made to the welfare officer was rejected. Therefore she was terminated from service. From the testimony of Shetty and Lata it reveals that in view of the strength of the employees in that exchange the canteen should have been of A Grade. As per the rules made by the MTNL for such a canteen the strength is 19. Admittedly at that relevant time the strength was much less than that. From the correspondence (Ex-9/2) which was addressed by the Manager to the Welfare Officer dated 25-2-88 it reveals that the services of the worker were immense necessary as in that exchange there were many women employees. Her services were essential for their convenience. That was their demand. It is mentioned in this letter that at that time there were 11 employees working in place of 19 employees and it was difficult for them to cope up with the work. This itself goes to show that the worker was not in excess in number, but her services were essential.

15. It is not in dispute that the canteen is run for the welfare of the Industry employees of the Central Telephone Exchange. It is tried to submit that the canteen is not an Industrial Esablishment and the dispute does not fall under the four corners of Industrial Dispute Act of 1947. Mr. Anchan the Learned Advocate for the Union and the worker argued that his question has been decided by their Lordships in appeal No. 21 of 1989 in Writ Petition No. 3298 of 1988. That was case between Bombay Telephone Canteen Employees Association V/s. N. C. Venkatraman and Ors. While rejecting the appeal their Lordships have observed :

> "An apprehension was voiced on behalf of the appellant that in case the dispute goes before the Competent Authority under the relevant statute an objection might be raised on behalf of the respondent authorities that since the members of the Association are employed in canteen run departmentally by the respondent Corporation which is State, the said Competent Authority would have jurisdiction to adjudicate the dispute. We do not see any valid reason for the entertainment of such apprehension nor have any doubt that even such objection is raised, it is bound to meet its pre-destined fate. However to allay the apprehension, a statement has been made on behalf of the respondent authorities that no such objection would be taken before the Competent Authority."

Under such circumstances I do not find any merit in the contentions of the management that it is not an Industrial establishment.

16. No evidence is adduced on behalf of the management that the worker was gainfully employed after her termination. There is no other evidence to show that she was employed or that she had any other source of income. For the reasons stated above his retrenchment is void. She has to be treated in service continuously. Naturally she is entitled to monetary benefits of all these years. I record my findings on the issues accordingly and pass the following order :

ORDER

1. The Management of Mahanagar Telephone Nigam Ltd., in terminating the services of Smt. Lata Gopinath Ugale the bearer in their departmental canteen w.e.f. 7-9-88 is not justified.

2. The management is directed to appoint the worker Smt. Lata G. Ugale at her original cadre within three months from today.

3. She has to be treated in continuous service from her date of termination i.e. from 7-9-88.

4. The management is directed to pay the wages to her from the date of her termination onwards.

5. The management is further directed to pay her the wages which were not paid to her before her termination at the rate of Rs. 1,003 instead of Rs. 750.

6. No order as to costs.

S. B. PANSE, Presiding Officer

नई दिल्ली, 9 जनवरी, 1996

का. आ. 320 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का (14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार उत्तर रेलवे के प्रबन्ध-तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-1-96 को प्राप्त हुआ था।

[संख्या एल-41012/51/94-आई आर-बी आई]

पी. जे. माईकल, डैस्क अधिकारी

New Delhi, the 9th January, 1996

S.O. 320.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Northern Rly., and their workman, which was received by the Central Government on the 8-1-96.

[No. L-41012/51/94-IR-BI]

P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, PANDU NAGAR, KANPUR

Industrial Dispute No. 72 of 1995

In the matter of dispute between :

The Working President,
Uttar Railway Karamchari Union,
96/196 Roshan Bajaj Lane,
Ganeshganj,
Lucknow.

AND

The Divisional Railway Manager,
Northern Railway,
Hazratganj,
Lucknow.

AWARD

1. Central Government, Ministry of Labour, New Delhi vide its notification No. L-41012/51/94-I.R. (B-I) dated 15-6-95, has referred the following dispute for adjudication to this Tribunal :—

Whether the Railway Administration, Northern Rly., Lucknow is justified in allowing supersession of Smt. Durgawati, Staff Nurse, Grade-III in promotion to grade-II and thereafter grade-I by her juniors ? If so, what relief is Smt. Durgawati entitled to ?

2. Inspite of repeated opportunities, having been given to the concerned workman, she neither filed any claim statement nor put in appearance in the Tribunal. It appears that she is not interested in the case.

3. Hence my answer to the reference is in the affirmative and against the concerned workman for want of proof. She is not entitled to any relief.

4. Reference is answered accordingly.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 9 जनवरी, 1996

का. आ. 321.—औद्योगिक विवाद अधिनियम, 1947 (1947 का (14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जवाहर लाल नेहरू पोर्ट ट्रस्ट, मुम्बई के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण श्रम न्यायालय सं. 2, मुम्बई के पंचाट को प्रकाशित करती है, को केन्द्रीय सरकार को 8-1-96 को प्राप्त हुआ था।

[संख्या एल-31011/3/90-आई आर. (विविध)]

बी. एम. डेविड, डैस्क अधिकारी

New Delhi, the 9th January, 1996

S.O. 321.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 2, Mumbai as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Pawaharlal Nehru Port Trust, Mumbai and their workmen, which was received by the Central Government on the 8-1-96.

[No. L-31011/3/90-IR (Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, BOMBAY

PRESENT :

Shri S. B. Panse Presiding Officer

Reference No. CGIT 2/10 of 1990

Employers in relation to the management of Jawaharlal Nehru Port Trust.

AND

Their Workmen

APPEARANCE :

For the Employer.—Mr. L. L. D'Souza, Representative.

For the Workmen.—Mr. Jaiprakash Sawant, Representative.

Bombay, dated 18th December, 1995

AWARD

The Government of India, Ministry of Labour, by its letter No. L-31011/3/90-IR (Misc) dtd. 13-6-90 had referred to the following industrial dispute for adjudication :—

"Whether the action of the management of Jawaharlal Nehru Port Trust in deciding to discontinue the transport facility to the workmen from Bombay Vashi, Nerul and Uran to the work place at Sheva is legal and justified. If not, to what relief the workmen are entitled ?"

2. The General Secretary of Nava Sheva Port and General Workers Union filed statement of Claim at Ex-4. It is contended that the union is a registered one and represents majority of the workers involved in the present dispute. It is averred that the action of the management in deciding to discontinue the transport facility to the workmen from Bombay, Vashi, Nerul and Uran to the work place at Sheva is illegal and unjustified. It is averred that the trasnport facility is given to the workmen right from the year 1982 and is in existence since then. Now it has become and condition of the service of the workmen. It is customary concession, privilege and usage.

3. The Union contended that the management cannot withdraw the same facility in view of the clause No. 19 of the settlement dtd. 12-6-89 arrived at between Federations of the Port and Dock workers and the Management of Port Trust including the Jawaharlal Nehru Port Trust.

4. The Union pleaded that the transport facility is instrumental for more productivity Industrial Peace and Harmony. It is averred that such a facility is available in many more industries. It is submitted that its continuance is necessary having regard to the socio economic circumstances.

5. It is prayed that in such a circumstance it may be held that the action of the management in deciding to discontinue the transport facility to the workman from Bombay, Vashi, Nerul and Uran to the work place Sheva is illegal and unjustified.

6. The management resisted the claim by their written statement Ex-'5'. It is averred that the Jawaharlal Nehru Port Trust here in after referred to as J.N.P.T. commenced its operation from May 1989. At the initial stage when the township was under construction it was situated at a very remote area. There was no adequate public transport facility available for employees to commute to the place for work. Further more the J.N.P.T. had not even constructed houses for their employees at that time. In view of these facts the J.N.P.T. purely is a temporary measure provided buses, plying from Dadar and Uran to the port. An adequate number of residential quarters have been constructed and aleady occupied by the employees. In view of this fact there was no justification for continuous transport facility as it was costing a very huge financial burden on the management. It is therefore, decided to discontinue the same.

7. The J.N.P.T. therefore, gave a notice of change on 29-1-90 inter alia informing the employees that the transport facilities would be discontinued any time after 19-2-90. The union opposed such a change. It is submitted that there is absolutely no justification for continuing transport facility. It is averred that the action of the management is justified, legal and proper.

8. My learned Predecessor framed issues at Ex-'6'. The issues and my findings there on are as follow :—

	Issues	Findings
1.	Whether the transport facility in question cannot be withdrawn in view of the clause No. 19 of the Settlement dtd. 12-6-89 between the Federation of the Port and Dock Workers and the mgt. of the Port Trusts including the Jawaharlal Nehru Port Trust ?	The settlement has no application
2.	Whether the action of the mgt. of Jawaharlal Nehru Port Trust in deciding to discontinue the transport facility to the workmen from Bombay, Vashi, Nerul and Uran to the work place at Sheva is legal and justified ?	Legal.
3.	If not, to what relief the workmen are entitled ?	Does not Survive.
4.	What Award ?	As per final Order.

REASONS

9. Jaiprakash H. Sawant (Ex-'9') affirmed that in view of clause No. 19 of settlement dtd. 12-6-89 the facility of transport of the workmen cannot be withdrawn. In the cross examination he admitted the fact that J.N.P.T. was not party to the settlement dtd. 12-6-89. As this is so the said settlement has no application to the dispute in question.

10. Ex-'8|1' is a letter dtd. 3-8-89 issued by under secretary Government of India to the Chairman, J.N.P.T. The subject matter of the said letter is application of pay scales and allowances as per the wage settlement dtd. 12-6-89 to the employees of J.N.P.T. It is rightly argued on behalf of the management if the said settlement was applicable to the employees of the J.N.P.T. then there was no need for the government to issues such a type of letter. As there was no application to the said settlement to the employees of J.N.P.T. a letter was issued. I find substance in it.

11. It is submitted on behalf of the management that transport facility was never intended to be given as the service condition. Jaiprakash affirmed that when the appointment was given such a condition was mentioned in the appointment letter. He agreed to produce the appointment letter but appears to have not produced the same. I therefore find that there was no such condition in the appointment letter to assert right to have the transport facility for going to the duty place. It appears to have given as a temporary measure as J.N.P.T. was situated in a remote area. At initial stage there was no adequate public transport facility available for its employees to commute to the place of work and also in view of the fact that the township was in its construction stage. Shinde (Ex-15) the Asstt. Manager Industrial Relation of J.N.P.T. affirmed that there was no such a condition in the appointment letter. As the union failed to produce any such appointment letter I have no hesitation to believe the word of the management.

12. It is not in dispute that no adequate public transport facility is available for commuting from Bombay to Panvel to the place of work. Shinde affirmed that the employees of J.N.P.T. are also entitled to use the Hourly Passenger Launch facility from Bombay to the port free of cost. Sawant does not dispute it. Under such circumstances it is tried to argue that now the management is justified in discontinuing the said facility. I find substance in it.

13. The management placed reliance on Atik Industries Ltd. v|s. Their Workmen, 1972 II LLZ 20. It is observed by their Lordships that :—

> "The contention of Mr. Seelavad that the Tribunal had no jurisdiction to give direction for paying transport allowance after rejecting the claim of the union for the company making provision for free transport, will have considerable force, if the Tribunal had rejected the claim for free transport on the ground that the employer is not under any circumstances liable to make any such arrangement or bear transport expenses incurred by the workmen either in whole or in part. As we will show presently the ground on which the Tribunal rejected the claim of the Union that the employer should provide free transport was not on the ground that the employer is under no circumstances liable to provide the same, but because of the fact that a sound transport system existed on the route and as such was conveniently available to the workmen."

14. It is not in dispute on 27-1-90 notice of change for discontinuing the transport facility was given. Yet the J.N.P.T. did not discontinue the said free transport facility pending adjudication of the reference. It was continued till 31-15-95. Then there was an understanding between the J.N.P.T. and its employees as stated in the specification notice of change dtd. 24-4-95. (Ex-12|1). Such change of notice has been accepted by its workmen and the union also did not dispute the same. By the said change of notice it was agreed and accepted by the workmen that the transport facility would be provided to all the employees for attending duties and back subject to the condition that the employees will have to pay different transport charges as mentioned in the said notice. The employees who are not staying in the townships are being paid transport subsidy of Rs. 90 per month. The change is accepted by the workers. Under such circumstances the employees are not entitled to any reliefs.

15. It is tried to argue on behalf of the union that as the consequential benefits including the payment of House Rent allowance which has been forfeited by the management may be awarded to the employees along with

interest Looking to the terms of reference the House Rent Allowance which is claimed by the employees cannot fall in the perview of consequential benefits. It is rightly argued on behalf of the management that it is settled law that jurisdication of the Tribunal is limited to the points specially referred for its adjudication and to matters incidental there to and the Tribunal cannot go beyond the terms of reference. In view of this proposition the prayer of the union that the issue of House Rent Allowance has to be dealt with cannot be accepted. In the result I record my findings on the issues accordingly and pass the following order :—

ORDER

1. The action of the management of J.N.P.T. in deciding to discontinue the transport facility to workmen from Bombay, Vashi, Nerul and Uran to the workplace at Sheva is legal and justified.

2. No order as to costs.

S. B. PANSE, Presiding Officer

18-12-95.

नई दिल्ली, 9 जनवरी, 1996

का. आ. 322.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स भारत पैट्रोलियम कारपोरेशन लि. के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, अहमदाबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-1-96 को प्राप्त हुआ था।

[संख्या एल-30012/19/92 – आई आर (विविध) (कोल-1)]

ब्रज मोहन, डैस्क अधिकारी

New Delhi, the 9th January, 1996

S.O. 322.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Ahmedabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bharat Petroleum Corporation Ltd., and their workmen, which was received by the Central Government on 5-1-96.

[No. L-30012/19/92-IR (Misc.)/(Coal-I)]

BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE SHRI H. D. PANDYA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL (CENTRAL), AHMEDABAD

Reference (ITC) No. 21 of 1995

ADJUDICATION

BETWEEN

Bharat Petroleum Corpn.,

Ahmedabad.

AND

The Workmen employed under it.

In the matter whether the action of the Bharat Petroleum Corporation Ltd., Ahmedabad in dismissing Shri Markand Jayantilal Badheka with effect from 9-7-1991 is justified ? If not, to what relief the workman is entitled to ?

AWARD

The Desk Officer, Government of India, Ministry of Labour, New Delhi vide his Order No. L-30012/19/92-IR (Misc.) dated 15-6-93 has referred an industrial dispute as stated in the Schedule of above order between the above parties u/s. 10(1) of the I.D. Act, 1947, for adjudication to this Tribunal.

This matter was adjourned from time to time to enable the workmen to lead evidence. However, the workmen did not remain present. Finally, the matter was fixed today i.e. 21-12-95. But the workmen was not present when called out. Hence, the reference is dismissed. No order as to costs.

H. D. PANDYA, Presiding Officer

Ahmedabad, 21st December, 1995

नई दिल्ली, 9 जनवरी, 1996

का. आ. 323.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एल आई सी आफ इंडिया के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में, केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-1-96 को प्राप्त हुआ था।

[संख्या एल-17012/11/88 –डी IV ए/आई आर (बी-2)]

ब्रज मोहन, डैस्क अधिकारी

New Delhi, the 9th January, 1996

S.O. 323.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of L.I.C. of India and their workmen, which was received by the Central Government on 8-1-1996.

[No. L-17012/11/88-DIVA/IR(B.II)]

BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA, PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, PANDU NAGAR, DEOKI PLACE ROAD, KANPUR

Industrial Dispute No. 187 of 1988

In the matter of dispute

BETWEEN

R. C. Ambedkar
House No. 1|5 Usmanpur Colony
Juhi, Kanpur 208001

AND

The Divisional Manager
L.I.C. of India
Divisional Office
Kanpur.

AWARD

1. Central Government, Ministry of Labour, New Delhi, vide its notification No. L-17012/11/88/D-IV(A)(D.IV) dated 16-12-88 has referred the following dispute for adjudication to this Tribunal :—

"Whether the action of the management of LIC of India in terminating the services of Sri Ramesh Chandra Ambedkar, Probationary Development Officer, Fatehpur Branch office w.e.f. 1-2-86 is fair, just and legal? If not to what relief the workman concerned is entitled ?"

2. Following facts are not in dispute amongst the parties :—

The concerned workman Ramesh Chandra Ambedkar was appointed through Ext. M.11, order dt. 14-6-84, as Probationary Development Officer for a period of 12 months. Thereafter, by means of Ext. M.2 letter dt. 14-6-85 he was appointed as Development Officer on probation for a period of 12 months. He was discharged from service in terms of his appointment letter Ext. M.2 because of unsatisfactory work and conduct. Initially in the reference order, the date of termination was mentioned as 1-2-86 later on by way of amendment it has been amended to 4-2-86. On the other hand management claims that the services of the concerned workman were terminated w.e.f. 17-1-86.

Be that as it may, the concerned workman has raised the instant industrial dispute with regard to his discharge of service on the ground that his services could not be dispensed when without holding any enquiry regarding his alleged misconduct and alleged unsatisfactory work. Further discharge order is bad in law inasmuch as he was not paid retrenchment compensation and notice pay.

3. On the other hand the management in its written statement has alleged that the discharge of the concerned workman was made in terms of the agreement as such there was no need to hold any enquiry before discharge. It is further alleged that since the concerned workman was on probation there was no need for holding any enquiry. Similarly there was no need to comply with the provisions of section 25 F of Industrial Disputes Act, 1947. It has also been urged that concerned workman is not a workman as envisaged by the relevant provisions of Industrial Disputes Act.

4. In support of his case the concerned workman has filed Ext. M-1 to M-14 whereas the management has filed Ext. M.1 to M.37. Apart from this the concerned workman has adduced his evidence whereas management has adduced the evidence of Administrative Office H.N. Singh.

5. I am of the view, there is hardly any need to make mention of evidence as the case can be conveniently disposed of on the basis of admitted facts.

6. In the first place it is the objection of the management that the concerned workman in the capacity of Development Officer does not fall in the purview of workman as envisaged in Industrial Disputes Act. I think that this question is no longer resintegra as in the case of S. K. Verma Versus Mahesh Chandra (1983) 8 SCR who was placed in the similar circumstances it has been held by the Hon'ble Supreme Court that the Development Officer would be covered by the provisions of Industrial Disputes Act. Hence this objection is overruled.

7. Now next point which need consideration is as to whether the concerned workman has completed more than 240 days. It has been admittedly by the opposite party and indeed it is proved by the appointment letter and other papers that the concerned workman had initially worked from 14-6-84 for a period of one year as Apprentice Development Officer, thereafter, he worked as Probationary Development Officer. Ext. M-15 is the payment sheet of salary which shows that the concerned workman had been paid wages for the entire month of January 1986. This belies the case of the management that the termination of the concerned workman was made on 17-1-1986 otherwise how can salary of the entire month of January would have been made to the concerned workman. Hence it will be taken that at least the concerned workman had worked from 14-6-84 upto the end of January 1986 continuously. During this period he has worked as apprentice for one year. It is well settled law that if a certain person works as apprentice under Apprentice Act, he is not considered as a workman. In the instant case it is not the case of parties that the concerned workman was appointed as apprentice under Apprentice Act. Hence his performance of work during the period of apprenticeship will also be counted for the purpose of determining days of work. From his point of view it is evident that the concerned workman had worked for more than 240 days from 14-6-84 upto the end of January 1986.

8. It was urged by the management that there was no need to hold enquiry. I agree with this preposition of law that when certain person works on probation he has no lien over service and as such if in terms or agreement he is discharged there is no need to had any enquiry on the ground of unsatisfactory work. Hence, the objection of the concerned workman in this regard is overruled and conclude that discharge order cannot be assailed on this ground.

9. Any how I am of the view that for the purpose of section 25F I.D. Act, working on probation is immaterial. If it is found that any workman has worked for more than 240 days on doubt it is the right of the management to discharge the workman but he has to comply with the provisions of sec. 25F I.D. Act. Admittedly the management has not complied with the provisions hence the termination order will be bad in law. It is held accordingly.

10. As regards the relief the management has filed a hosts of papers which go to show that the work of the concerned workman was highly unsatisfactory inasmuch as he has failed to give the requisite target. Further he appears to be habitual late comer and not amendable to advice of superiors. In my opinion, it will be not conducive to industrial peace if such a person is allowed to continue in service, hence I am of the view that this case has special feature for not granting reinstatement. Instead awarding of compensation would be the adequate relief.

11. As regards yardsticks for determining compensation, I would like to refer to the case of O. P. Bhandari versus Indian Tourism Development Corporation, 1986 (53) PLR 752 in which it has been held that where the Industrial Tribunal does not find it convenient to order for reinstatement after holding termination to be bad in law, compensation should be awarded by calculating his services for 3.33 years on the basis of pay which he had drawn for the last time.

12. Hence my award is that the action of the management of L.I.C. of India in terminating the services of the concerned workman is not legal but he will not be entitled for reinstatement. In lieu of reinstatement he will be entitled for his salary for the period of 3.33 years on the scale which he was drawing on the date of termination as compensation. Workman shall also get Rs. 100 as costs of the case.

13. Reference is answered accordingly.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 10 जनवरी, 1996

का. आ. 324.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू सी एल के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बम्बई नं. 2 के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-1-96 को प्राप्त हुआ था।

[सं. एल-22012/10/92-आई आर (सी - II)]

राजा लाल, डैस्क अधिकारी

New Delhi, the 10th January, 1996

S.O. 324.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947, the Central Government hereby publishes the award of the Central Government Industrial Tribunal Bombay No. 2 as shown in the Annexure in the industrial dispute between the employers in relation to the management of W.C. Ltd. and their workmen, which was received by the Central Government on 8-1-1996.

[No. L-22012/10/92-IR (C-II)]

RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, BOMBAY

PRESENT :

Shri S. B. Panse, Presiding Officer.
Reference No. CGIT-2/12 of 1993

Employers in relation to the management of Durgapur Open Cast of Western Cal Fields Ltd.,

AND

Their Workmen.

APPEARANCES :

For the employers—S/ Shri B. N. Prasad and Shri G. S. Kapur, Advocates.

For the Workmen—Shri S. Mazhar Representative.

Bombay, dated the 11th December, 1995

AWARD

The Government of India, Ministry of Labour by its letter No. L-22012/10/92-IR (C-II) dated 9-2-1993 had referred to the following industrial disputes for adjudication :—

"Whether the action of the management of Durgapur OCP of W.C. Ltd., in denying promotion and payment of arrears to their workman Shri R. R. Dixit, Shovel Operator, is legal and justified ? If not, to what relief the concerned workman is entitled to ?"

2. The worker R. R. Dixit filed a statement of claim at Ex-'2'. He contended that on 17-3-79 he was appointed as a trainee fitter at New Majri Colliery, Dist. Chandrapur. From 1980 he started performing the job as shovel operator on HEMM machines. He pleaded that he was to get an upper grade in 1982, but he was given a second category. It is pleaded that from the letter of the Management of Majri Colliery it is clear that he was regularly operating HEMM since 6-12-80.

3. The workman pleaded that he made representations to the management for getting grade A in view of job distribution scheme but it was not considered favourably. But a letter was written to the Durgapur Colliery, New Majri Colliery. In reply it was replied to Durgapur Colliery that they don't have the record.

4. The worker pleaded that in the year 1986 he asked for grade A but he was given grade B in 1987. It is averred that his juniors were promoted at that time. He averred that in the year 1993 the management promoted him in grade 'A', category 'A'. All these facts clearly go to show that he is entitled to Grade 'A' from 1-8-87 to 30-6-92 alongwith arrears dues near about Rs. 12,000.

5. The management of Durgapur Colliery resisted the claim by the written statement Ex.-'3'. It is averred that there is no industrial dispute as contemplated u/s. 2-K of the I. D. Act. It is submitted that it is the right of the management to give promotion and nobody can claim it as the right. It is submitted that on 22-12-92 the worker was promoted in grade 'A' i.e. prior to the refgrence was made to this Tribunal. Under such circumstances the reference is not tenable. It is averred that when the worker was appointed he was not qualified for the grade which he asked for. It is averred that whenever he was found qualified promotions were given to him and in a short span he received two promotions. It is submitted initially the posting of the worker was in maintenance and he was taken up for the operations.

6. The management contended that the Asstt. Labour Commissioner refused to make the reference as there was no document in favour of the worker. It is averred that initially the worker had no heavy vehicles training licence. He obtained the same later on and then he could get some promotions.

7. The letter to which the worker relies is against the factual details of his career growth indicated in his service records authenticated by the worker himself under his own signature. It is submitted that since the document was highly doubtful a clearance was sought from the superintendent Mines, New Majri. He is head of the Union, Superintendent (Mines), New Majri opened case informed the Deputy Personnel Manager Durgapur, Open Cast that the workman was on the role of New Majri Colliery and that he was engaged in maintenance work and was as such promoted as fitter, helper category (II) in 1982 and that old records were not available in his unit.

8. For all these reasons it is submitted that the reference may be answered in favour of the management.

9. New Majiri Colliery of W.C. Ltd., party No. 1 filed W.S. at Ex-'9' and adopted the contention taken by Durgapur Colliery at Ex-3.

9. The issues that fall for my consideration and my findings there on are as follows :

ISSUES	FINDINGS
1. Whether the action of the Management of Durgapur O.C. branch in denying promotion and payment of arrears to their workman Shri R. R. Dixit, Shovel opreator is legal and justified ?	Justified
2. If not to what relief the concerned workman is entitled to ?	Does not survive.

REASONS

10. Ravindra R. Dixit (Ex-'3') affirmed that he was appointed at New Majri Colliery on 17-3-79. He was required to work as the operator on H.E.M.M. regularly since 6-12-80. To substantiate this contention he placed reliance on Annexure-A alongwith the statement of claim. This is a letter by senior officer New Majiri Area to the Personnel Manager, Durgapur Open Cast Area. In the W.S. the management doubted in respect of its genuineness. The workman had not given any application calling upon the management to produce original one. From the perusal of the letter it appears that this was the correspondence between two area managers. There is no endorsement that it is to be given to the worker. The worker had nowhere deposed how he came in' possession of the same. As the management had doubted the genuineness the burden was on the worker to prove the same. He would have called the concerned officer to prove it, but he had not done so. It can be seen that the management in response to this letter wrote a letter dated 1-11-91. It was informed to them by the concerned authorities that the relevant record is not traceable as it is an old one. On its basis it is tried to argue on behalf of the management that the letter appears to be procured by the worker for his benefit. He further submitted that the service record of the worker is contrary to the contents of that record. As that is so it should not be accepted as the correct one. I find substance in it.

11. Dixit admitted in the cross-examination that he was trained at ITI as the machinist. He was not trained as the operator of Heavy Earth Moving Machinery. It is not in dispute that initially he worked as a fitter. He claims to have received the punishment letter dated 6-12-80 as the operator. It is not in dispute as the job of operator is of skilled one. He claims that he was asked to work as the Shovel from 16-12-80. He denied the suggestion that three years experience is required for doing the job. Alongwith the workman the extract is produced showing non-inclination. Job-description categorisation etc. of coal employees. Group 'D' deals with excavator operator (loader). It states that the skilled worker not less than 2 years experience in the operation and handling of Electric/diesel shovel. He will operate such equipment of capacity of less than 1.5 cum. He should have knowledge of the mechanism of the equipment and he should undertake the minor training repairs. Admittedly the workman had not gone for such a training. It can be further seen that till 1984 he was not having the licence of heavy motor vehicle. These mechines appears to

be of heavy motor vehicle. It is therefore he cannot be assigned the said job.

12. The worker had tried to make out the case that he is entitled to monetary relief long back from 1982 there was no reason for him to keep quiet till 1990. He admitted that he never complained with any officer for receiving less pay.

13. Promotion is not a right. It is discretion of the employer but at the same time if it is shown that the discretion is malafide used or that it is against the principles of natural justice then in that case the Tribunal can look into the matter. Here no evidence as adduced to show that the juniors of the workman were promoted with malafide intention, or with the view of victimisation of worker.

14. For all these reasons I find that the action of the management is justified. Hence I pass the following order :

ORDER

1. The action of the management of Durgapur, Open Cast of W.C. Ltd., in denying promotion and payment of arrears of their workmen Shri R. R. Dixit, Shovel Operator is legal and jusified.

2. No order as to costs.

Dated : 8-12-1995

S. B. PANSE, Presiding Officer

नई दिल्ली, 10 जनवरी, 1996

का. आ. 325—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इस्टर्न सी एल के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बम्बई नं. 2 के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-1-96 को प्राप्त हुआ था।

[सं. एल – 22012/147/91 - आई आर (सी –II)]

राजा लाल, डैस्क अधिकारी

New Delhi, the 10th January, 1996

S.O. 325.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Bombay No. 2 as shown in the Annexure in the industrial dispute between the employers in relation to the management of W.C. Ltd. and their workmen, which was received by the Central Government on 8-1-1996.

[No. L-22012/147/91-IR (C-II)]

RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, BOMBAY

PRESENT :

Shri S. B. Panse, Presiding Officer

Reference No. CGIT-2/37 of 1991

Employers in relation to the management of Chanda Rayatwari Colliery of W.C.L., Chandrapur

AND

Their Workmen.

APPEARANCES :

For the employer—Shri B. N. Prasad, Advocate.

For the workmen—Shri S. R. Pendre, Representative.

Bombay, the 7th December, 1995

AWARD PART II

On 26th April, 1993 my predecessor passed Award Part-I. He came to the conclusion that the domestic enquiry which was held against the workman was proper and as per the principles of Natural Justice.

Now by the award I have to answer issues No. 2, 3 and 4. Before reproducing the issues it will be better to summarise the facts of the case. The workman was a permanent loader at Chanda Rayatwari Colliery, Chandrapur. He was charge-sheeted for going on duty in drunkenness and behaving in disorderly manner. It was also alleged that the quarrels and his case were subversive of discipline in the premises under order 13(B) (5) of the Model Standing Order. The worker replied the charges. A departmental enquiry was conducted against him. He was found guilty and was punished.

2. Now the issues and my findings there on are as follows :

	ISSUES	FINDINGS
2.	Whether the dismissal order from 6-5-1990 issued by the Sub-Area Manager, W.C. Ltd., Chanda Rayatwari Colliery, Chandrapur against Shri Yelkapalli Permayya, Loader, is legal and justified ?	No
3.	If not, to what relief the workman is entitled ?	As per final order
4.	What Award ?	As per final order.

REASONS

3. Shri Yellapalli Permayya (Ex-17) the worker affirmed that the order of dismissal which was issued against him as unfair labour practice and victimisation. He had also said that the order of dismissal is not in good faith. It is tried to argue on behalf of the management that the worker nor in the statement of claim or in the evidence has stated that the punishment awarded to him is disproportionate to the charges proved. According to the management under such circumstances the Tribunal should not in voice section 11(A) of the I. D. Act and substitute other punishment for the punishment of dismissal.

4. It can be seen that the worker is repreesented by the Union leader. They are not said to be qualified. In the Industrial Dispute it is always to be seen what the parties want to say. The strict rules of pleadings are not applicable. From the averment in the statement of claim and from the testimony of the worker it is to be stated that he wants to say that the punishment which was awarded to him is disproportionate to the charges proved. I therefore find that the Tribunal can pass the order u/s 11-A of the I. D. Act in the present matter.

5. After going through the inquiry proceeding and from the testimony of the worker I do not find that the inquiry officer had no bias mind and his report is perverse.

6. The workmen alongwith other 24 persons were given chargesheet. All of them gave reply to the same. It is pertinent to note that the explanation given by other workers was accepted by the management and no further pleas were taken against them. But so far as the workmen is concerned the domestic enquiry was started against him. It is tried to argue on behalf of the management that the worker and the other employees were not charged with the one and the same charge. The charges were different. According to the management the main allegations against the other loadres were that eventhough they have gone down the ground on 5-9-89 in the second shift they did not do their work and set down in the working place in the whole of the second shift and third shift. They came out of the mine only in the first shift of 6-9-89. So far as work is concerned he was chargesheeted for instigating the 18 loaders to remain inside the mine and not to come out so long their demand was not met. He was also charged to thereafter the manager for payment of the wages of 5-9-89. He was charged for instigating the loaders of the

first shift on 6-9-89 to resort to illegal strike and threaten that so long wages to 18 loaders were not paid the loaders should not report for their work. It is submitted that because of that the loaders of the first shift went on illegal strike on 6-9-89. The work could not be resumed till 10.15 hours. It is submitted that the worker who was really spoiling the peace and the other loaders were just spoons in his hand.

7. It is tried to argue on behalf of the management that eventhough the offences committed by the 18 loaders and the workers are related they are different in nature and effect even though same cause of the standing orders are attracted. The role which is played by the worker is to be taken into consideration. From the certified clause in the chargesheet which do not find place in the other loaders, but finds placed in the charge of the worker. It is therefore tried to argue that the dismissal order in respect of the worker is justified and there is no discrimination.

8. I am not inclined to accept the submission made on behalf of the management because the other loaders and worker were charged for particular days incident i.e. they did not work in the second and third shift and again the worker was charged for instigating the loaders of the first shift on the next day for not going on duty. The second day's incident was connected with the first day's incident so far as the wages were concerned. It is not in dispute that the worker was working as the loader of their union for that wing of the coal mine. Naturally he had to take lead for the demands of the members of his union. If that is so he cannot be singled out and punished. It can be seen that the others were allowed to go free and he was awarded the punishment of dismissal. I do find substance in the argument of the management that there are some additional charges against the workman such as behaving rudely, going on the working place in a dunken state and others. But so far as the punishment in respect of these charges even if said to be proved the order of dismissal appears to be very harsh. Looking to the totallity of the circumstances I find that the punishment which is awarded to the worker is disproportionate in view to the fact that the others are not given any punishment. To meet the needs of justice I find that from 1990 onwards i.e. from the date of his dismissal till today he is not in service and he lost salary benefits. While passing the order of reinstatement if no monetary relief is granted to him it will meet the ends of justice. This will help the industry to create peace in the mine. With this view in mind I record my findings on the issues accordingly and pass the following order :

ORDER

1. The dismissal order from 6-5-90 issued by Sun Area Manager, W.C. Ltd. Chandrapur, Chanda Rayatwari Colliery against Shri Yelkapalli Peddayya, loader is not legal and justified.

2. The management is directed to reinstate the worker at his original status as on 6-5-90. He is entitled to continuity in service for all other benefits.

3. The worker is not entitled to any monetary reliefs from the date of his dismissal till reinstatement.

S. B. PANSE, Presiding Officer

नई दिल्ली, 10 जनवरी 1996

का. आ. 316.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ.सी.आई. के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चण्डीगढ़ के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-1-96 को प्राप्त हुआ था।

[सं. एल-12012/15/82-डी-II (बी)/डी IV (बी)/डी V)]

राजा लाल, डैस्क अधिकारी

New Delhi, the 10th January, 1996

S.O. 326.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Governmen. Industrial Tribunal Chandigarh as shown in the Annexure in the industrial dispute between the employers in relation to the management of F.C.I. and their workmen which was received by the Central Government on 8-1-1996.

[No. L-12012/92-DII(B)/DIV(B)/DV)]

RAJA LAL., Desk Officer

ANNEXURE

BEFORE SHRI S. R. BANSAL, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH.

Case No. ID 22/86

Workmen through General Secretary, FCI Class IV Employees Union, PB No. 30, Nabha Gate, Sangrur.

Vs.

The Senior Regional Manager, FCI, Punjab Region, Chandigarh, Respondent.

For the workmen : S.K. Gupta.

For the management : N.K. Zakhmi.

AWARD

In exercise of the powers conferred by clause 'D' of Sub-Section I and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (for short called as the Act), the Central Govt. referred the dispute between the workmen Nand Singh, Mohinder Singh son of Shri Dharam Pal, Mohinder Singh son of Shri Darshan Singh Jaswant Singh, Manohar Singh son of Shri Pritam Dass and Jaswinder Singh and the management of Senior Regional Manager, FCI, to this court for adjudication vide their letter No. L112012 (15)/28-D.II.B D.IV/B/D/D.V. dated 27th January, 1986 :—

"Whether the action of the management of FCI in not paying bonus/Ex-gratia to the casual Watchmen for the accounting years 1979-80 and 1980-81 ending on 31-3-1980 and 1981 respectively is justified?" If not, what relief the casual workman/watchmen are entitled to?"

On receipt of the reference, notices were issued to the workman as well as to the managemnt. The workmen appeared and submitted their statement of claim dated 19-3-1986 in which they have taken up the position that they are the casaul watchmen

with the District manager FCI Ferozepur. It was alleged that ex-gratia|bonus was paid to all the regular as well as casual staff of their district during the year 1979 to 1982. However District Manager FCI Ferozepur did not pay ex-gratia| bonus to the casual watchmen of District Ferozepur with malafide intention. A prayer was, therefore, made for directing the district manager FCI Ferozepur to compute their benefits and pay the same to them.

The management filed the written statement. The plea was taken that the claim for bonus can only be entertained by an authority appointed under the payment of Bonus Act and the Labour Court has no jurisdiction to entertain the claim for bonus. On merits, it was pleaded that the workmen were never engaged with FCI. No relationship of employer and employees exists. Therefore question of making payment of ex-gratia|bonus does not arise. It pleaded that the workmen are the employees of the contractor as terms settled in the agreement and therefore, they are not entitled to any bonus from the management. In any case, it was pleaded that the reference is belated, not maintainable on account of mis-joinder and non-joinder of the parties. The claim statement was pleaded to be vague with regard to the place where the workmen have performed their duties.

The workmen submitted replication controverting the allegations of the management as made in the written statement and reiterated their earlier versions.

On the basis of the pleadings, the workmen were called upon to lead their evidence. Although the workmen submitted their affidavits, but they did not appeared in the court for their statements despite the fact that number of opportunities were granted to them. The learned predecessor of this Court vide his order dated 21-4-94, shut the evidence of the workmen by order of the court. The management was directed to produce its evidence. The management produced MW1 L.D. Pal Singh, District Manager FCI Ferozepur, who tendered his affidavit Ex. M1. He has been cross-examined. During cross-examination, he denied that the bonus is being paid to the workmen who have completed more than 30 days of service as casual worker. He denied that the workmen are the employees of the FCI and stated that hey are the employees of the contractor.

I have heard the learned representatives of the parties, they have also taken me to the entire evidence on the file.

As noticed above, the workmen have not led any evidence on the file although their affidavits are placed on the file but they have failed to appear in the witness box to make statement, in order to enable this court to treat their affidavits as part of the evidence. Similarly, the other documents placed on the file as Annexure-I and Annexure-II have not been proved according to law. On the other hand, the management has produced Shri L.D. Pal Singh District Manager FCI Ferozepur who tendered his affidavit Ex. M1. This witness was cross-examined. The persual of the affidavit of this shows that the witness has made his statement in the Court after going through the complete record of the case. The position taken by him in para No. 2 of the affidavit is that the workmen are the employees of the contractor and there is no relationship of employer and employee between the workmen and the FCI. It further reveals that the FCI never paid remuneration to the workmen directly nor were there under the administrative control of the FCI. It has also been stated therein that here is an authority appointed under the payment of Bonus Act. The workmen have not mentioned the date from which and the date upon which they worked. The period of bonus has also not been mentioned in the statement of claim filed. The persual of the record shows that the management has filed an application dated 24th December, 1987 for directions to the workmen to supply full particulars but the workmen have failed to furnish. In view of this, the claim of the workmen is vague. As noticed earlier, the workmen have not led any evidence despite the fact that repeated opportunities were granted to them and their evidence was closed by the order of the court. Although, learned representative of the workman, contended with some amount of vehemence that there was another reference No. 17 of 1985 in which the workmen have held to be the employees of the FCI, yet, the workmen has not chosen to produce the certified copy of the said Award in the evidence. In the absence of same, the workmen can not held to be employees of the FCI. Moreover the workmen are admittedly the casual watchmen of the FCI. A casual watchman is not entitled to bonus as per the provisions of FCI Act 1974. Moreover the workmen may have their remedies before the authority under the Payment of Bonus Act and it is doubtful whether they could have raised industrial dispute with regard to the payment of bonus.

For the aforesaid reasons, I am of the clear view that he workmen have failed to prove that the action of the management in not paying bonus|ex-gratia to the casual watchmen for the year 1979-80, 1980-81 ending 31-3-1980 and 31-3-1981 respectively is unjustified. On the other hand, the management have able to prove that its action is fully justified. The workmen are therefore not held entitled to any relief. The reference is thus answered against the workmen and in favour of the management. Appropriate govt. be informed.

Chandigarh,

5-12-1995.

S. R. BANSAL, Presiding Officer

नई दिल्ली, 10 जनवरी, 1996

का. आ. 327.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी बी एम बी के प्रबन्ध तंत्र से संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चण्डीगढ़ के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-1-96 को प्राप्त हुआ था ।

[संख्या एल – 42012/116/89 – डी – 2 (बी)]

राजालाल, डैस्क अधिकारी

New Delhi, the 10th January, 1996

S.O. 327.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Chandigarh, as shown in the Annexure in the industrial dispute between the employers in relation to the management of B.B.M.B. and their workmen, which was received by the Central Government on the 2-1-96.

[No. L-42012/116/89 D-2(B)]

RAJA LAL, Desk Officer

ANNEXURE

IN THE COURT OF SHRI S. R. BANSAL, PRESIDING OFFICER, CENTRAL GOVERNMENT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH

I.D. no. 11/90

Ravi Dutt Auto Mechanic, Ex. Token No. 319 AN .. Workman

Versus

1. Beas Construction Board, through Chief Engineer, B.S.L. Project, Sunder Nagar.
2. Bhakra Beas Management Board, through Chief Engineer, Bhakra Beas Management Board (B.S.L.) Sunder Nagar District Mandi. (H.P.).

.. Respondents

PRESENT :

1. Shri Dhani Ram Representative of workman.
2. Shri Vijay Singh Representative for the Management.

AWARD

The Central Government in exercise of their powers vested under Section 10(1)(d) of the Industrial Disputes Act, 1947 vide order No. L-42012/116/89-D-2(b) dated 11-1-1990, referred the following dispute for adjudication to this Tribunal :—

"Whether the action of the Management of B.S.L. (Project) Bhakra Beas Management Board in denying employment to Shri Ravi Dutt Auto Mechanic is legal and justified ? If not, to what relief the workman concerned is entitled to and from what date ?"

On receipt of the above said reference, a notice was sent to the parties. On appearance, the General Secretary, Bhakra Beas Management Board Karamchari Sangh preferred the claim statement on behalf of Shri Ravi Dutt, the workman. It was submitted in this claim statement that Shri Ravi Dutt, Auto Mechanic was appointed with the Respondent-Management on 11-8-1966 under the control of the Punjab Government, as prior to re-organisation of Punjab, the erstwhile State Project in the name of Beas Project Unit I, Sunder Nagar. It was alleged that in 1974, the Central Industrial Tribunal had given an Award titled 2-C Award of 1971, according to which it was envisaged that the services of the workmen who had completed 10 years continuous service should be regularised. It was contended that Shri Ravi Dutt was not taken in service being the senior-most than Shri Krishan Dy. Mechanic Auto, presently working in Sunder Nagar Workshop Division, Bhakra Beas Management Board, Sunder Nagar. According to the claim statement, the services of Shri Ravi Dutt were terminated by the respondent-Management by retaining his juniors without any reason. It was also contended that Shri Ravi Dutt workman has served on the Project for more than 18 years upto 20-4-1984 and, thus, he is entitled to pension as per 2-C Award. The respondent-Management, however, filed their reply to the claim statement and justified the retrenchment of workman with effect from 20-4-1984. The workman also submitted a rejoinder to the written statement of the respondent Management and reiterated the assertions as made in the claim statement.

With a view to prove their assertions both the parties led their evidence in the form of affidavits. While the workman tendered his affidavit Exhibit-1, the respondentt-management filed affidavit Exhibit M-1 of Shri J. K. Mandal, Executive Engineer (Electrical). Both the parties also tenderd documents, Exhibits W.2 to W.6 and M.1 to M.2 in support of their contentions. The tenderers of the affidavits were also produced in the witness-box by the parties for purposes of cross-examination by the opposite party.

I have heard the arguments of the representatives of the parties and have also gone through the record minutely. In his affidavit Exhibit W-1, the workman deposed that he was appointed as Auto Mechanic on 11-8-1966 and the Superintending Engineer vide his letter No. 11646-50 dated 16-4-1984

served upon him 24 hour's notice for discharge of his services. It was further deposed that the discharge notice did not make any mention with regard to the retention of his junior Shri Krishan Dyal, who was obviously allowed to be retained by the Management. According to the affidavit Exhibit W-1, after the termination of the workman with effect from 20-4-1984, Shri Kishan Dyal was offered to join service in the Bhakra Beas Management Board with effect from 21-5-1984, which is violative of Section 25-G of the Industrial Disputes Act, 1947. The workman, thus, claimed his reinstatement in service with full back wages from 20-4-1984 with consequential benefits or alternatively was alleged that he may be granted pension as per Temporary Service Rules, 1965 of the Respondent-Management. In support his contention the workman tendered Exhibit W-2, the seniority list, Exhibit W-3, Minutes of the Meeting held on 13-7-1979, Exhibit W-4 the Discharge Notice, Exhibit W-5 Discharge Certificate and Exhibit W-6, the seniority list of regular industrial workers (Class III) and the Respondent Management in their affidavit Exhibit M-1, however, deposed that when Shri Ravi Dutt, workman was appointed in the B.S.L. Project with effect from 11-8-1966, the Project was being managed by the erstwhile State of Punjab. It was further deposed that 2-C Award as given by the Central Tribunal on 15-5-1974 was not binding on the Bhakra Beas Management Board. The Management further deposed in this affidavit that Shri Krishan Dayal was taken over in Bhakra Beas Management Board in accordance with the reservation policy of the State in preference to the workman, as he belongs to Scheduled Castes category. It was further deposed that the workers who were served with discharge notices in the year 1984, had even approached the Hon'ble on 30-3-1984. According to them, the workman, besides others similarly situated, were rightly discharged on 30-3-1984, and 20-4-1984 as they were found surplus to the requirement of Beas Construction Board. According to the Management, the workman was paid gratuity, wages for the notice period and the retrenchment compensation before his services were dispensed with. According to the affidavit Exhibit M-1, the workmon was not entitled to any pensionary benefits as the Management had paid him all the terminal benefits as were due to the workman under the Rules. The workman in his cross-examination has also admitted that he had received pay in lieu of the notice period. The cross-examination of Shri J. K. Mandal, Executive Engineer also reveals that the workman was given fresh appointment in Bhakra Beas Management Board with effect from 27-1-1992 as Auto Mechanic. During the course of the arguments, the representatives of workman mainly attacked the only aspect involved in the case that Shri Kishan Dayal junior to the workman had been appointed by the respondent Management in preference to the workman. The perusal of record clearly establishes that the services of the workman were dispensed with by the respondent-Management on account of his being surplus to the requirements of the Project. The respondent Management had evidently paid the requisite compensation and other benefits like gratuity, etc. while dispensing with the services of the workman. It is true that Shri Kishan Dayal has been junior to the workman as per seniority list Exhibit W-2 by one step, but as alleged by the respondent Management, he was offered fresh appointment later on under the reservation policy of the State Government and he was given appointment in preference to the workman being a member of Scheduled Caste Community. The respondent Management has placed on record the reservation policy of the State which is Exhibit M-2, which provides preference in recruitment in the case of Scheduled Castes/Scheduled Tribes workman appears to be legally justified. In view of the position as explained above, the action of the Management of B.S.L. Project in denying employment to Shri Ravi Dutt at the time when the same was offered to his junior Shri Krishan Dayal appears to be justified. In any case, the workman has now been given fresh appointment in Bhakra Beas Management Board vide letter dated 27-1-1992 and as such he is not entitled to any other relief. The reference of the Central Government is answered accordingly.

Pronounced on Dec. 5, 1995

Chandigarh.

S. R. BANSAL, Presiding Officer

नई दिल्ली, 10 जनवरी, 1996

का. आ. 328.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पोस्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, मद्रास के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-1-96 को प्राप्त हुआ था।

[संख्या एल-40012/10/94-आई आर (डी यू)]

के. वि. बी. उण्णी, डैस्क अधिकारी

New Delhi, the 10th January, 1996

S.O. 328.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Madras as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of Post and their workmen, which was received by the Central Government on 9-1-1996.

[No. L-40012/10/94-IR(DU)]

K.V.B. UNNY, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU, MADRAS.

Friday, the 8th day of December, 1995

PRESENT

THIRU N. SUBRAMANIAN, B.A.B.L.,

INDUSTRIAL TRIBUNAL

INDUSTRIAL DISPUTE NO. 46 OF 1995

(In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 between the Workmen and the Management of Post Master General, Trichirapalli and another).

BETWEEN

The Workmen represented by
Divisional Secretary,
National Union of Postal Employees
(ED Agents),
Nagapattinam, Q.M. Dist. Tamil Nadu.

AND

The Post Master General
Central Region,
Tiruchirapalli-620 001.
2. Superintendent of Post Offices,
Nagapattinam-611 001

REFERENCE :

Order No. L-40012|10|94-IR(DU) dated 20th July 1995, 4th August, 1995, Ministry Labour, Government of India, New Delhi.

This dispute coming on this day for final disposal upon perusing the reference and other connected papers on record and both the parties being absent, this Tribunal passed the following.

AWARD

This reference has been made for adjudication of the following issue :—

"Whether the action of the Post Master General, Trichirapalli, and Supdt. of Post Offices, Nagapattinam, refusing payment of Flood Advance to its employees is justified? If not, to what relief the employees are entitled?"

No representation for Petitioner till 5.30 p.m. Petitioner called absent. Hence Industrial dispute dismissed for default. No costs.

Dated, this the 8th day of December, 1995.

THIRU N. SUBRAMANIAN, Industrial Tribunal

नई दिल्ली, 10 जनवरी, 1996

का. आ. 329.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में, केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचपाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-1-96 को प्राप्त हुआ था।

[संख्या एल-12012/43/92-आई.आर.(बी.2)]

ब्रज मोहन, डैस्क अधिकारी

New Delhi, the 10th January, 1996

S.O. 329.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of India and their workmen, which was received by the Central Government on 9-11-996.

[No. L-12012|43|92 IR(B-II)]

BRAJ MOHAN, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR (MP)

CASE REF. NO. CGIT|LC(R)(147)|1992.

BETWEEN

Shri Deendayal S|o Shri Shibbulal, Subedarwada, Bharka Deena Hotel, Sagar (MP).

AND

The Regional Manager, Bank of India, Napier Town, Near Russel Chowk, Jabalpur, (MP)-482 001.

PRESIDED IN :

By Shri Arvind Kumar Awasthy.

APPEARANCES :

For Workman : Shri S. K. Mutreja.

For Management : Shri R. K. Patnaik.

INDUSTRY : Banking DISTRICT : Jabalpur (MP).

AWARD

Dated : December 26, 1995.

This is a reference made by the Central Government, Ministry of Labour vide its Notification

No. L-12012/43/92-IR B-2 dated 6-7-1992, for adjudication of the following industrial dispute :

SCHEDULE

"Whether the action of the management of Bank of India, Saugor (MP) in terminating the services of Sh. Deendayal w.e.f. 31-7-1993, is justified? If not, to what relief is the workman entitled to?"

2. The case of the workman is that he has worked as a Peon in the Bank of India, Sagar Branch, Sagar from 1st September, 1983 to 31st August, 1985 and his services were illegally terminated without giving him any notice or retrenchment compensation.

3. The case of the management is that Shri Deendayal was engaged intermittently purely on casual basis for a total period of 43 days and as such his claim is not tenable.

4. The workman remained absent continuously on several hearings and he has neither filed any rejoinder, documents or affidavit. The workman has failed to prove his case Consequently, the reference is answered against the workman. Parties to bear their own costs.

ARVIND KUMAR AWASTHY, Presiding Officer

नई दिल्ली, 10 जनवरी, 1996

का. आ. 330—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केनारा बैंक के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में, केन्द्रीय सरकार औद्योगिक अधिकरण कोजीकोड के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-1-96 को प्राप्त हुआ था।

[संख्या एल-12012/219/91—आई. आर. बी.

ब्रज मोहन, डैस्क अधिकारी

New Delhi, the 10th January, 1996

S.O. 330.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Kozhikode as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of CANARA BANK and their workmen, which was received by the Central Government on 9-1-96.

[No. L-12012/219/91 IR (B-II)]

BRAJ MOHAN, Desk Officer

ANNEXURE

IN THE COURT OF THE INDUSTRIAL TRIBUNAL, KOZHIKODE

(Dated this the 21st day of December, 1995)

Present

Shri M. N. Radhakrishnan

Industrial Tribunal

I. D. 36/91

Between :

The Deputy General Manager,
Canara Bank, Circle Office,
Thiruvananthapuram.

And

The Assistant Secretary,
Canara Bank Employees' Union,
Guna Pai Junction, P.B. No. 3673.
Ernakulam, Cochin-682035.

Representations :

Sri K. V. Sachidanandan,
Advocate, Kozhikode. —For Management

Sri K. Hemachandran,
Advocate, Kozhikode. —For Union

AWARD

(1) Central Government as per their order No. L-12012/219/91-IR.B-II dated 22-11-91 made the present reference relating to an industrial dispute between the management of Canara Bank and Canara Bank Employees Union. The issue referred for adjudication is:—

"Whether the action of the management of Canara Bank in refusing 49 days of leave to Smt. Daisamma Thomas, Clerk, Edakkara Branch, Malappuram District with effect from 15-1-1989 is justified ? If not, to what relief the workman is entitle to ?".

(2) The Union submitted a claim statement setting out their case as follows :

Smt. Daisamma Thomas entered on maternity leave for 90 days from 3-9-88 to 1-12-88. Towards the end of maternity leave, she had to under go an operation on her right hand wrist at Marian Hospital situated near her house at Palai in Kottayam District. For the purpose of undergoing operation and for taking bed rest, she applied for 45 day's privilege leave on medical ground in continuation of the first maternity leave as per her leave

application dated 2-12-1988. Along with the leave application she had also enclose a Medical Certificate from Dr. Joseph V. Champarathy, M.S. (Orth), who performed the operation on her right hand wrist. The management accepted the Medical Certificate and sanctioned the leave for 45 days.

(3) Towards the expiry of the aforesaid 45 days leave Smt. Daisamma Thomas found it difficult to travel by bus or to sit and work consequent to severe back pain which was developed after her first delivery. Therefore the same Orthopeadic Surgeon viz-Dr. Joseph V. Champarathy advised her to take further rest for 49 days. As the employee had still sufficient previlege leave and sick leave to her credit, she again applied for a further extension of leave for 49 days on medical ground as per her leave application dated 14-1-1989. The Medical Certificate evidencing her ill-health by Dr. Joseph V. Champarathy was also enclosed along with the leave application dated 14-1-1989. After submitting leave application, she had to go to her husband's house at Mannathara in Idukki District for taking bed rest. Thereafter, the management instructed the employee to undergo a medical check up by Dr. Ramani N. Rajan, Gyanecologist at Ernakulam as per their letter dated 9-2-1998. This letter was sent by the Bank at the Care of address of her husband who is working as a Lecturer in the Sacred Hearts College, Ernakulam. As the employee was then at her husband's house in Idukki District, she sent a letter to the management on 20-2-1989 expressing her difficulty to report before the doctor at Ernakulam as her physical condition was very weak and the doctor has specifically advised her to avoid travelling. Besides, there was also difficulty for her to travel with her four months old child. Thertafter nothing was heard in reply to the same from the side of the management. On the expiry of the leave for 49 days, she reported for duty at the Edakkara Branch on 7-3-89 and produced a Medical Fitness Cerificate from Dr. Joseph V. Champarathy who recommended leave for her earlier periods. The management accepted the fitness certificate and permitted her to join duty on 7-3-89. After the expiry of 53 days of her rejoining duty on 7-3-89, the management issued an order dated 29-4-1989 informing her that the 49 days leave applied for by her on 14-1-89 was rejected and the said period would be treated as one without leave and on loss of pay since she had not subjected herself for examination by Dr. Ramani N. Rajan, Gynaecologist, at Ernakulam. As a result of this vindictive action taken by the management, the employee lost her service period of 49 days and also her salary for 49 days with effect from 15-1-1989. Besides, the annual increment of the employee is also delayed every year to the extent of this 49 days period.

(4) There is absolutely no reason or justification in not accepting the Medical Certificate issued by Dr. Joseph V. Champarathy recommending leave for 49 days from 15-1-89 onwards. Back pain and resultant complications is in orthopeadic case and the expert who is qualified to treat such case is an orthopeadic Surgeon. A Gynaecologist is not an adapt for analysing and detecting the underlying root cause for back pain. The management accepted the Medical Certificate issued by Dr. Joseph V. Champarathy recommending leave for 45 days at the first instance and the fitness certificate issued by the very same doctor and thereafter they should be estopped from contending at a belated stage that the Medical Certificate issued by the very same doctor recommending leave for another 49 days cannot be accepted without the report of a Gynaecologist at the choice of the management. There is absolutely no reason or justification in rejecting the leave of Smt. Daisamma Thomas for 49 days with effect from 15-1-1989 on medical grounds especially in view of the fact that she had sufficient privilege leave and sick leave to her credit. The leave rejection order dated 29-4-1989 issued by the Deputy General Manager in highly illegal, irregular, unwarranted, unjustifiable and without any bonafides. Smt. Daisamma Thomas is entitled for the leave applied for by her and also for salary and other benefits during the leave period.

(5) Terefore they prayed for an award holding that the order rejecting leave of Smt. Daisamma for 49 days is unsustainable and holding that she is entitled to consequential benefits

(6) The management submitted a written statement refuting the claims of the Union and contending as follows :

Smt. Daisamma Thomas (48261), Clerk is working at the Edakkara branch of the Bank. The above employee was granted maternity leave of 90 days from 28-9-1988 to 1-12-1988. She had vide her letter dt. 29-10-1988, requested the Bank for grant of privilege leave for 90 days in continuation of maternity leave already sanctioned, for the purpose of taking rest. This request was not supported by any medical certificate recommending rest. Bank had, vide its letter TSSW/10730/T-13/RC dt. 12-11-1988, informed her of their inability to grant her the leave requested for. She was also requested to report for duty on expiry of maternity leave sanctioned upto 1-12-1988. Thereafter, the above employee vide her letter dated 2-12-1988 requested for 45 days

leave on medical grounds with effect from 2-12-1988. In the medical certificate sent along with the application, it was certified that she was suffering from 'de Quervien's Teno Vaginitis (RL) and she was advised her rest for 45 days with effect from 2-12-1988. Even though the Bank had reasons to believe that she has sought leave on medical grounds after it refused her privilege leave, the same was sanctioned to her purely on humanitairan consideration. The Bank had also informed her vide its letter TSW/58/T-13/TG dt. 4-1-1989 that further extension of leave might not be permitted. Inspite of this, the empolyee continued her absence beyond the period of leave sanctioned and again sought for a further extension of 49 days of leave with effect from 15-1-1989. In the medical certificate submitted along with her request it was stated that she was suffering from 'Chronic Lumbo Strain' and recommended absence from duties for 49 days with effect from 15-1-1989. Even though the Bank had doubt on first occasion as stated above, the sick leave was granted on humanitarian consideartion. Since second extension also had been sought on medical ground and the Bank had doubt over the medical certificate, she was instructed to appear before a doctor on its approved panel a Ernakulam as her leave address had been given as Cochin. The Bank had also made it clear that the sanction of leave would be subject to the medical report of the doctor on its approved panel. But the employee neither reported to the doctor as directed nor informed anything to the Bank. The letter informing her inability to appear before the Bank's doctor was sent to her branch only on 4-3-1989. Though she had given her leave address as Cochin, the fact that she was actually staying at Murikasseri in Idukki came to the Bank's notice only from the above letter. As per Bank's leave rules, the employees proceeding on leave should furnish their full and correct postal address to which communication may be addressed to them during the period of leave and shall from time to time keep the Bank informed of any change in address. So, it is evident that the employee did not give her correct leave address as required. Subsequently, she claimed that the Bank's instructions had not been received by her in time. If this is so, the responsibility for the same lies with the employee only for not making necessary arrangements to give correct address to the Bank by her, for speedy transmission of communications to her. This information was also not conveyed to the appropriate authorities in time, but has subsequently furnished in such a way that it would reach the addressee only after her joining the branch. She repoined duty on 9-3-1989. Had she informed the Bank of her inability to appear before the doctor of its choice sufficiently early, the Bank would have made alternate arrangements and directed her to report to another doctor of its choice nearer to her place of stay. The employee had failed to comply with the Bank's instructions to appear before a doctor of its choice inspite of specific instructions to do so and thereby disobeyed the lawful and reasonable orders of persons placed in authority over her. Though disobediance of lawful and reasonable orders of persons placed in authority over her is a gross misconduct under Chapter XI, Regulation 3 Clause (d) of Canara Bank Service Code, apart from treating her absence as one without leave and hence on loss of pay, by taking a lenient view and purely on humanitarian grounds, no disciplinary action was initiated against the employee and only for absence for 49 days from 15-1-1989 to 4-3-89 was treated as one without leave and hence on loss of pay. Sick leave can be granted on production of a medical certificate acceptable to the Bank. Since the Bank had doubt over the genuineness of the medical certificate she was called upon to appear before a doctor of their choice which she did not comply with. Action of the Bank is supported by the provisions of Bipartite settlement and Canara Bank Service Code. Therefore, they prayed for passing an award upholding their action and rejecting the claims of the Union.

(7) Evidence in this case consistst of oral evidence of WW1 and Exts. W1 to W3 and Exts. M1 to M15.

(8) The point that arises for my consideration is whether the action of the management in refusing 49 days leave with effect from 15-1-1989 is justified.

The point :

(9) Smt. Daisamma, the employee involved in this dispute was on sanctioned maternity leave for 90 days from 3-9-88 to 1-12-88. Thereafter she applied for previlege leave on medical grounds for 45 days from 2-12-88. Ext. M1 is the application for said leave and Ext. M2 is the medical certificate submitted in support of the said application. She has undergone an operation at the Marian Medical Centre, Palai at the wrist of her right hand. She was suffering from severe back pain and she was advised to take further rest. Accordingly, the management was pleased to grant leave for 44 days from 2-12-88 to 14-1-89 as per their Ext. M10 order. On 14-1-89, she has again applied for leave for 49 days as per her Ext. M3 application for leave dated 14-1-1989. Ext. M4 is the medical certificate submitted in support of the same.

(10) On receipt of this, the management as per Ext. M6 orders, directed her to apear before Dr. Ramani Rajan, Vijaya Hospital, Ernakulam for a medical check up. Admittedly she did not

comply with this direction. As per Ext. M7 letter, she explained her inability to travel from her husband's house at Murikassery in Idukki where she was then staying to Ernakulam due to her poor health conditions. Thereafter she joined duty on 7-3-89. Ext. M13 is a letter of management dated 28-3-1989 issued to her asking her explanation for not complying with their direction to report for medical check up. Ext M12 is her explanation in the matter dt. 6-4-89 in which she clearly explained the peculiar circumstances under which she could not appear before the doctor of Bank's approved panel. It was because of her ill health only that she could not go to Ernakulam for medical check-up. She did not disobey the orders of the superiors deliberately. She availed leave under compelling health reasons only. She was admitted at the Marian Medical Centre, Palai for delivery which was the nearest hospital to her house. Thereafter she had to undergo an operation at the wrist of her right hand at the same hospital. After getting discharged from the hospital, she went to her husband's residing at Murikassery in Idukki District. Her Cochin address was only her care of address in the name of her husband. She has duly submitted her explanation for not appearing before the panel doctor and it has reached the Bank belatedly due to postal delay. Therefore, she prayed for excusing her laches and requested for sanctioning leave from 15-1-1989 to 4-3-1989.

(11) Thereafter, as per Ext. M5 proceedings of the management, it was ordered that her absence for 49 days to be treated as one without leave and hence on loss of pay. It is evident from the said proceedings that the reasons stated by her for her non-compliance of their instructions to report before the doctor of the bank's approved panel for check up were not convincing and satisfactory to them and that was why such an order was passed in the matter. As a consequence of this, the employee has lost her service period of 49 days and salary for 49 days. Besides, her increment will also, be delayed every year to the extent of 49 days.

(12) Justifiability of the above order is the subject matter of challenge in the present reference

(13) I have considered the relevant materials on record and I am of the view that the order the management is not justified in the facts and circumstances of the case. The employee concerned has as per Ext. M7 and M12 representations clearly explained to the management regarding the facts and circumstances under which she has to avail leave for 49 days and she could not comply with the direction to report before the doctor of Bank's panel. It is true that her non-compliance of reporting before the doctor of Bank's panel is a breach of the relevant terms of employment. But she was prevented by sufficient cause from appearing before the said doctor. Therefore, the breach is only technical and innocuous one. It is seen that the management was also pleased to condone the same as per their Ext. M15 order dated 3-5-89 and dropped the proposal for disciplinary action in the matter. She was on authorised maternity leave for 90 days. Thereafter, she has to undergo an operation on her wrist of right hand. This has necessitated her for taking leave for 44 days which the management was pleased to grant. Thereafter also, her health did not improve and she was advised by a competent doctor to take rest and avoid long journeys. There was no material at the disposal of the management to controvert her submissions, in the matter She has clearly stated before me in her evidence as WW1 about the facts and circumstances under which she had to avail leave for 49 days and that she was incapacitated from reporting before the doctor of Bank's panel due to her ill health. Her evidence is not controverted in any manner. Therefore, the approach of the Bank can be found to be arbitrary and unjust in the matter. Despite her poor health, they expected her for undertaking a long and arduous journey along with her nascent baby for a medical check up at Ernakulam so as to convince them as to her physical condition. The management is competent and empowered to do so as per the relevant rules. To my mind, when we implement such rules relating to sickness, it must be tempered with a humanitarian outlook and not a Spartan approach as has been done in the present case. By virtue of the impugned order, she has lost her service and wages for 49 days and her increment will be delayed by 49 days throughout her career. This will breed a heart burning in her which is not desirable in industrial relations point of view of the Bank also. Suffice to say, the inpugned action of the management is unjustified. I hasten to add that this shall not be interpreted as a premium in all cases by the employee and she shall take all care to not to repeat such instances in future

(14) In the result, an award is passed holding that the action of the management in refusing 49 days leave to Smt. Daisama with effect from 15-1-89 is not justified and that she shall be granted leave and other consequential benefits in the matter accordingly.

M. N. RADHAKRISHNA MENON, Industrial Tribunal.

APPENDIX IN I.D. 36/91

Witness examined on the side of the Management :

MW1 : NIL

Documents marked on the side of the Management :

Ext. M1 : Letter from Smt. Daisamma Thomas to the Deputy General Manager, Thiruvananthapuram dated 2-12-1988.

Ext. M2 : Medical Certificate.

Ext. M3 : Letter from Smt. Daisamma Thomas to the Deputy General Manager, Thiruvananthapuram dated 14-1-1989.

Ext. M4 : Medical Certificate.

Ext. M5 : Proceedings of the Deputy General Manager dated 29-4-1989.

Ext. M6 : Letter from the Manager, Canara Bank, Thiruvananthapuram to Smt. Daisamma Thomas dated 9-2-1989.

Ext. M7 : Letter from Smt. Daisamma Thomas, Canara Bank, Edakkara to the Deputy General Manager, Circle Office, Thiruvananthapuram dated 20-2-1989.

Ext. M8 : Letter from Smt. Daisamma Thomas, Canara Bank, Edakkara to the Deputy General Manager, Circle Office, Thiruvananthapuram dated 29-10-88.

Ext. M9 : Letter from the Manager, Canara Bank, Thiruvananthapuram to Smt. Daisamma Thomas dated 12-11-1988.

Ext. M10 : Letter from the Manager, Canara Bank, Thiruvananthapuram to Smt. Daisamma Thomas dated 4-1-1989.

Ext. M11 : Telegram from the Manager, Canara Bank, SS(W). Circle office, Thiruvananthapuram to Smt. Daisamma Thomas dated 9-2-1989.

Ext. M12 : Letter from Smt. Daisamma Thomas, Clerk, Canara Bank, Edakkara to the Deputy General Manager, Canara Bank Thiruvananthapuram dated 6-4-1989.

Ext. M13 : Letter from the Assistant General Manager, Circle Office, Thiruvananthapuram to Smt. Daisamma Thomas dated 28-3-1989.

Ext. M14 : Proceedings of the General Manager, Canara Bank dated 3-1-1989.

Ext. M15 : Letter from the Assistant General Manager, Canara Bank, Circle Office, Thiruvananthapuram dated 3-5-1989.

Witness examined on the side of the Union :

WW1 : Smt. Daisamma Thomas.

Documents marked on the side of the Union :

Ext. W1 : Fitness certificate dated 4-3-1989.

Ext. W2 : Letter from Smt. Daisamma Thomas, Clerk, Canara Bank, Edakkara to the Deputy General Manager, Staff Section, Circle Office, Thiruvananthapuram dated 31-3-1989.

Ext. W3 : Letter from Smt. Daisamma Thomas, Clerk, Canara Bank, Edakkara to the Deputy General Manager, Staff Section, Circle Office, Thiruvananthapuram dated 6-4-1989.

नई दिल्ली, 10 जनवरी, 1996

का. आ. 331.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार विजया बैंक के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में, औद्योगिक अधिकरण, मद्रास के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-1-96 को प्राप्त हुआ था।

[संख्या एल-12012/294/93-आई आर बी. 2]

ब्रज मोहन, डैस्क अधिकारी

New Delhi, the 10th January, 1996

S.O. 331.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Madras as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Vijaya Bank, and their workmen, which was received by the Central Government on 9-1-96.

[No. L-12012/294/93-IR(B-II)]

BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU, MADRAS

Thursday, the 7th day of December, 1995

PRESENT :

THIRU N. SUBRAMANIAN, B.A.B.L., INDUSTRIAL TRIBUNAL

INDUSTRIAL DISPUTE NO. 107/1994

(In the matter of the dispute for adjudication under Section 10(1) (d) of the Industrial Disputes Act, 1947 between the Workman and the Management of Vijaya Bank, Madras).

BETWEEN

The Workman represented by
The Regional Secretary,
Vijaya Bank Workers' Organisation,
283, Pycrofts Road, Triplicane,
Madras-600 005.

AND

The Deputy General Manager,
Vijaya Bank (Zonal Office),
123, Marshalls Road,
Madras-600 008.

REFERENCE :

Order No. L-12012/294/93-IR(B.II), dated 4-3-1994, Ministry of Labour, Govt. of India, New Delhi.

This dispute coming on this day for final disposal in the presence of Thiru K. M. Ramesh, Advocate appearing for the Workmen and of Tvl. P. B. Krishnamoorthy, & M. Chidambaram, Advocates appearing for the Management and the Counsel for the workmen having made an endorsement for not pressing this dispute, this Tribunal passed the following :

AWARD

This reference has been made for adjudication of the following issue :

"Whether the action of the Management of Vijaya Bank, Madras in imposing the punishment of stoppage of two increments on cumulative basis in respect of Shri G. Thenappan, Clerk vide Order dated 30-6-92 is justified ? If not, what relief is the workman entitled to ?

Endorsement made, Industrial dispute dismissed as not pressed. No costs.

THIRU N. SUBRAMANIAN, Industrial Tribunal.

Dated, the 7th day of December, 1995

ENDORSEMENT MADE ON BEHALF OF PETITIONER

The Union is not pressing this petition. The dispute may be closed.

Sd/-

Michael Amalraj,
7-12-95

for K. M. Ramesh, Councel for Petitioner

नई दिल्ली, 11 जनवरी, 1996

का. आ. 332 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार वैस्टर्न रेलवे के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कामकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बम्बई नं.-1 के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-1-96 को प्राप्त हुआ था।

[संख्या एल-41012/155/93-आई आर बी आई]
पी जे माईक्कल, डैस्क अधिकारी

New Delhi, the 11th January, 1996

S.O. 332.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government herey publishes the Award of the Central Government Industrial Tribunal, Bombay No. 1 as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Western Rly., and their workman, which was received by the Central Government on the 9-1-96.

[No. L-41012/155/93-IRBI]
P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT TRIBUNAL NO. 1, BOMBAY

PRESENT :

Shri Justice R. S. Verma Presiding Officer.

Reference No. CGIT-43 of 1994.

PARTIES :

Employers in relation to the management of Western Railway, Bombay

AND

Their Workmen

APPEARANCES :

For the Management : Shri S. K. Upadhyaya

For the Workmen : In person

INDUSTRY : Railways STATE : Rajasthan

Bombay, dated 27th December, 1995.

AWARD

The appropriate Government referred the following dispute for adjudication to this Tribunal by reference letter No. L-41012|155|1993-IR (DU) dt. 15th July, 1994.

"Whether the action of the management of Western Railway, Bombay, in removing Shri A. D. Grover, Train Conductor| TTI, from service w.e.f. 20-5-1993 is legal and justified? If not, what relief is the said workman entitled to?"

2. The workman filed his statement of claim on 2-9-1994. The management of Western Railway, Bombay filed its written statement on 14-3-1995. A rejoinder was filed on 5-4-1995.

3. It is transpired that during the pendency of the reference, the wokrman filed a revision petition before the Chairman, Railway Board and made a further petition before the said Chairman on 20-4-1995 raising a grievance regarding the legality and propriety of his removal from service with effect from 20-5-1993, the subject matter of the present reference.

4. During the pendency of the adjudication proceedings of the reference, the aforesaid revision petition and the subsequent petition made to the Chairman, Railway Board were heard and decided and the said Chairman passed the following order :

"With reference to a request made by Shri A. D. Grover former TTI, Western Railway in his revision petition for holding of an inquiry with reference to the charges against him, the case had been remitted for departmental inquiry by the revisionary authority and the inquiry is in progress.

2. However, in view of the petition dated 20-4-95 received from Shri A. D. Grover, admitting the charges and regretting the incident and his conduct, the matter has been considered by the Railway Board as the revisionary authority, without waiting for the inquiry report. Keeping in view the overall circumstances of the case, Shri A.D. Grover's apology for his conduct and the fact that he has already suffered by remaining out of service for the last two years, I hereby order his reinstatement in Railway service with immediate effect, and miner penalty of censure may be imposed on him.

3. The intervening period of absence from duty from the date of removal till the date of reinstatement would be regulated as under:—

(a) For this intervening period, he would be entitled to the subsistances allowances as admissible in terms of Rule 1342-R-II.

(b) the intervening period will not be treated as duty for any purpose."

5. It appears that in compliance of the aforesaid order Shri A. D. Grover resumed duty on 29-5-1995. It further appears that on 28-6-1995 both the parties appeared before the Tribunal and filed the charge report, copy of the order of the Chairman Railway Board and an order passed by the General Manager (Establishment) of Western Railway headquarter Bombay, treating it to be a settlement between the parties.

6. It may be stated that no formal settlement as prescribed by the law was furnished at all.

7. Matter came up before me on 07-09-1995 and I directed the parties to file the original settlement for verification. No such settlement was filed me but on 30-9-1955, Shri A.D. Grover stated that major part of dispute had been settled and only a minor dispute survived and he may be permitted to file written statement in respect of surviving dispute. Since this request was not opposed by the other side, time was given and Shri A. D. Grover filed a supplementary written tstaement of claim. A reply to such an amended claim was submitted on behalf of the management on 23-11-1995. On 23-11-1995 Shri Grover prayed, for time to study amended reply and file a rejoinder if any with affidavit upon which the case was adjourned to 24-11-1995. On the said date Shri Grover filed a rejoinder with one document.

8. On purusal of pleadings and documents of the parties, it prima facie appeared to me that impugned removal of Shri Grover had been already substituted by a subsequent minor punishment imposed upon Shri Grover by the revisionary authority. In view of this fact, I had a doubt if the Tribunal retained the jurisdiction to adjudicate upon a new dispute which had been substituted for the original dispute, the original dispute having come to an end. Hence, I framed the following issue to be tried as a preliminary issue.

"Whether this Tribunal retains jurisdiction to hear the dispute in view of the subsequent developments mentioned above."

9. Both the parties prayed for time to argue the matter and hence the matter was adjourned to 15-12-1995 on which date, I heard both the sides in great details. The order was reserved by me and by the present order I propose to decide the issue mentioned above.

10. It is settled law that this Tribunal discharges quasi-judicial duties. However, it is also equally well settled that the Tribunal does not function as Civil Court having inherent jurisdiction. It does not have inherent pnwers to decide matters except those which are referred to it by the appropriate Government. It jurisdiction is limited and restricted only to the issue referred to it by the appropriate Government by order of reference. In other words the Tribunal has to function within the limitations imposed upon it by the terms of reference.

11. I am supported in my aforesaid view by the following observations made by Mr. O. P. Malhotra and K. R. Malhotra in their famous treatise "The Law of Industrial Dispute" 3rd edition volume I page 675

> "the functions of Tribunal are quasi-judicial but it is not a Civil Court. It has not the inherent power to decide any of the dispute raised by the parties in their pleadings. It jurisdiction is limited and restricted only to the issues referred to it by the appropriate Government by an order of Reference. In other words, the Tribunal has to function within the limits imposed upon it by the statute and has to act according to its provisions. In adjudicating upon an 'industrial dispute'. The Trbunal cannot arrogat to itself powers which the legislature alone can confer or do something which the legislature has not permitted to be done. The Tribunal acquires jurisdiction to adjudicate upon an 'industrial dispute' only after it has been referred to it. In other words, without such a reference, the Tribunal does not get any such jurisdiction to adjudicate upon any dispute. In adjudicating upon an 'industrial dispute', the Tribunal must look at the order of reference itself as it is only the subject matter of reference with which the Tribunal deals with. Where in an order referring an 'industrial dispute' to a Tribunal under S. 10(1) or in subsequent order, the 'appropriate Government' has spcified the points of dispute for adjudicatin, the Tribunal shall confine the adjudication to those points and matters incidental thereto. It would therefore, appear that while it is open to the 'appropriate Government' to refer the dispute or any matter appearing to be connected therewith for adjudication, the Tribunal must confine its adjudication to the points of dispute referred and the matters incidental thereto. In other words, the Tribunal is not free to enlarge the scope of the dispute referred to it but must confine its attention to the points specifically mentioned and anything which is incidental thereto.

12. Now it is an admitted position before me that the dispute referred to this Tribunal was "wethther the action of the management of Western Railway, Bombay in removing Shri A. D. Grover train conductor|T.T.I from service w.e.f. 20-5-1993 is legal and justified? If not, what relief is the said workman entitled to?" Admittedly the management has itself set aside the removal of Shri A. D. Grover and consequently this basic dispute no longer survives for adjudication. Subsequent development before the department revisional authority have altogether extinguished the original dispute.

13. In the present case it is an admitted position that Shri A. D. Grover's removal has been converted into a minor punishmnt and certain consequential oders have been passed with regard thereto. The aforesaid consequential orders do not flow from the order of removal of Shri Grover but flow from a different and a subsequent order of the management, which gives rise to a new cause of action altogether in the favour of the workman. In other words, the old cause of action, is no longer in existence.

14. The said dispute regarding minor punishment and consequential orders is not a subject matter of this reference at all.

15. Normally, Civil Courts are entitled to take into consideration subsequent developments and are also entitled to modulate the relief to be given on the basis of such subsequent developments. However, it is extremely doubtful if this Tribunal, having a very limited jurisdiction to adjudicate upon a dispute referred to it, can exercise a similar jurisdiction.

16. Shri Grover brought to my notice a copy of office memorandum issud by dpartment of Personnel and Training bearing No. 11012|15|50-Estt. (A) dated 3rd December, 1985. The genuineness of this memorandum is not challenged before me and it may be reproduced in extenso.

"OFFICE MEMORANDUM

Sub: Period of suspension to be treated as duty if only a minor penalty is imposed

after conclusion of the disciplinary proceedings-Recommendation of the National Council (JCM) —

The undersigned is directed to invite attention to this department O.M. No. 43|56|64-AVD dated 22-10-1964 containing the guidelines for placing Government servants under suspension and to say that these instructions lay down, inter-alia, that Government servant could be placed under suspension if a prima facie case is made out justifying his prosecution or disciplinary proceedings which are likely to end in his dismissal, removal or compulsory retirement. These instructions thus make it clear that suspension should be reserved to only in those cases where a major penalty is likely to be imposed on conclusion of the proceedings and not a minor penalty. The Staff Side of the Committee of the National Council set up to review the CCS (CC&A) Rules, 1965 has suggested that in cases where a Government servant, against whom an injuiry has been held for the imposition of a major penalty, is finally awarded only a minor penalty, the suspension should be considered unjustified and full pay and allowance paid for suspension period. Government have accepted this suggestion of the staff side. Accordingly, where departmental proceedings against a suspended employee for the imposition of a major penalty finally end with the imposition of a minor penalty, the suspension can be said to be wholly unjustified in terms of FR(54-B).

2. Ministry of Agriculture etc. are requested to bring the contents of para 1 cabove to the notice of all authorities concerned under their control.

3. These orders will become effective from the date of issue. Past cases already decided need not be reopened.

4. Hindi version will follow.

Sd|-

A. JAYARAMAN, Director".

17. On the basis of this memorandum Shri Grover submits that his suspension should beheld to be wholly improper and therefore the revisional order passed by the Chairman, Railway Board be held to be illegal and not in accordance with law. May be, it is so, but I am of a firm view that this questioin does not fall within the domain of the jurisdiction of this Tribunal, it not being an incidental question to the main dispute.

18. I am aware that all administrative action has to be fair and legal, particularly in a welfare state. It prima facie appears that the order of the Chairman of the Railway Board is in violation of aforesaid memorandum. However, it is for the Chairman of the Railway Board to reconsider the matter suo moto and review its orders so as to bring the same in confirmity with the aforesaid memorandum, which is binding upon the Railway also.

19. Shri A. D. Grover relied upon 1976 LAB IC 166 Sharma Restaurant, New Delhi and another Petitioner Vs. the Chief Commissioner and others respondents in support of the proposition that this Tribunal has largest jurisdiction to decide an incidental question. So far as this contention goes, it is unexceptionable. However, I have grave doubts if the present dispute raised before me and arising out of subsequent and distinct order can at all be said to be an order 'incidental' to the main dispute referred to this Tribunal and quoted in extenso above.

20. Shri A. D. Grover also relied upon 1976 LAB IC 216 (Gohati High Court) Asam Oil Company Limited Vs. The Presiding Officer Central Government Industrial Triunal ,Dibrugadh and others'. In that case, the limited question was regarding adjustment of interim bonus paid and it was held that the question of adjustability or otherwise of ad-interim bonus padi was a matter incidental to the issue referred to the Tribunal, and as such the Tribunal had the jurisdication to adjudicate on it. There can be no quarrel with this proposition. However, the ruling has also no applicability to the present case.

21. To sum up, I hold that the original dispute has come to an end due to supervening circumstances and is no more capable of being adjudicated upon by this Tribunal. The subsequent order passed by the Chairman Railway Board has given rise to a new and distinct cause of action to the workman, in respect of which he can either approach the Chariman, Railway Board to correct the injustice done to him, or if so advised can raise a fresh industrial dispute.

22. However, I would like to state that a poor Country like India can ill afford the luxury on an otherwise avoidable protracted litigation. It casts heavy burden on the exchequer and leads to grave torment of the employees. Hence, in facts and circumstances of the case I am of the view that it would be in fitness of things, if the Chairman of the Railway Board itself reconsiders his decision in light of the Government memorandum reproduced above, so that the workman who had already retired is not necessarily driven to approach the Government for getting this petty matter referred again for adjudication. However, as already stated, it is a mtterr for consideration of the Chairman Railway Board.

23. In the circumstances of the case I make an award accordingly that the dispute referred to this Tribunal is no longer available to be adjudicated upon and has been extinguished in toto and leave the parties to bear their own costs. Both the sides may be informed of the Award.

R. S. VERMA, Presiding Officer.

नई दिल्ली, 11 जनवरी, 1996

का. आ. 333 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार वेस्टर्न रेलवे के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बम्बई-नं 1 के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-1-96 को प्राप्त हुआ था।

[संख्या एल--41012/18/92--आई आर बी आई]

पी. जे. माईक्कल, डैस्क अधिकारी

New Delhi, the 11th January, 1996

S.O. 333.—In pursuance of Section 11 of the Industrial Dispute Act, 1947 (14 of 1947). the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Bombay No.-1 as shown in the Annexure, in the industrial dispute between the employers in relation to the Management of Western Rly and their workman, which was received by the Central Government on 9-1-1996.

[No. L-41011/18/92-IRBI]

P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, BOMBAY

PRESENT :

Shri Justice R.S. Verma,
Presiding Officer.

Reference No. CGIT-62 of 1995

PARTIES :

Employers in relation to the Management of Western Railway, Bombay.

AND

Their Workmen

APPEARANCES :

For the Management : No appearance.

For the Workmen : No appearance.

INDUSTRY : Railways STATE : Maharashtra

Bombay, dated the 27th day of December, 1995

AWARD

The following dispute was referred to this Tribunal by the Ministry of Labour, Government of India, New Delhi by the reference letter No. L-41011/18/92-IR(DU) dated 9th September, 1993.

"Whether the action of the management of Western Railway Bombay in not regularising the services of Shri Laxman G. Sita Ram and 32 other Goods Train Guards is justified ? If not, what relief the workmen concerned are entitled to ?"

2. Notices were issued to the Divisional Secretary P.R.K.P., R.K. Vaidya Marg, Dadar(W), Bombay-400028, for submitting a proper claim. The notices were duly served by Registered Post A.D. and none appeared for the Union on the dated fixed i.e. 12-11-93. A representative of the management put his appearance on that date and the case was adjourned to 14-1-1994. No statement of claim was filed by the union again. Nobody appeared for the union but Shri P.R. Pai, Advocate put in appearance for the Management. The Presiding Officer was on leave and the case was ajourned to 9-3-1994. On that date Shri P.R. Pai appeared for Railways but nobody appeared for the union and the case was adjourned to 4-4-1994. On 4-4-1994 Shri P.R. Pai appeared for the Railway and Shri Anchan, Advoiate appeared on behalf of the union and prayed for time for filing statement of claim. Thereafter, case was adjourned on a number of occasions but no statement of claim has been filed by the concerned union. Shri Anchan, Advocate pleads no instructions on behalf of the union.

3. In the aforesaid circumstances I have been left with no alternative but to proceed ex-parte against the union. The management is also absent todays and therefore the case has to proceed ex-part against the management as well.

4. There is no material on record to show that non-regularisation of the services of Shri Laxman G. Sita Ram and 32 other Goods Train Guards was improper or illegal or was not justified. The award is made accordingly. The award be submitted to the appropriate Government in accordance with law.

R. S. VERMA, Presiding Officer

नई दिल्ली, 11 जनवरी, 1996

का. आ. 334 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इंडिया के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में, केन्द्रीय सरकार औद्योगिक अधिकरण, कलकत्ता के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-1-96 को प्राप्त हुआ था।

[संख्या एल-12012/709/88/डी II ए/आई. आर. बी. 2]

ब्रज मोहन, डैस्क अधिकारी

New Delhi, the 11th January, 1996

S.O. 334.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure in the industrial dispute between the employers in relation to the management of Central Bank of India and their workmen, which was received by the Central Government on 10-1-1996.

[No. L-12012/709/88-D.II (A)-IR (B-II)]

BRAJ MOHAN, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Reference No. 16 of 1989

PARTIES :

Employers in relation to the Management of Central Bank of India

AND

Their Workman.

PRESENT :

Mr. Justice K. C. Jagadeb Roy, Presiding Officer.

APPEARANCES :

On behalf of Management—Mr. S. Sarkar, Advocate.

On behalf of Workman—Mr. P. Ghosh, President of National Union of Mercantile Employees with Miss G. Ghosh, Advocate.

STATE : West Bengal INDUSTRY : Banking

AWARD

By Order No. L-12012/709/88-D.II (A) dated 18th May 1989, the Central Government in exercise of its powers under Section 10(1)(d) and 10(2-A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Central Bank of India in terminating the services of Shri Deb Kumar Saha is justified ? If not, to what relief is the workman entitled ?"

2. Both the parties are represented by learned counsels and have led evidence. Whereas the workman had examined himself as his sole witness, the management have examined one of their officers as their only witness. Both the parties have relied on several documents which would be referred to in the body of the Award.

3. Admittedly Sri Deb Kumar Saha the workman was appointed as per the appointment letter Ext. M-1 as a Sub-staff (Peon) on probation of 6 months with effect from 24-8-1987 on a basic salary of Rs. 430 alongwith D.A., C.C.A., House Rent Allowance as admissible as per rules. During the period of probation according to the workman, he applied for leave for the period begining from 4-9-1987 to 15-9-1987 supported by medical certificate dated 3-9-1987. Out of this period the workman had prayed that his absence on 4th September 1987 be treated as Casual Leave due to him and 5th and 6th September 1987 being holidays the period between 7-9-1987 to 15-9-1987 be treated as his Sick Leave. He resumed his duties on 16th September 1987. The management however passed order treating the entire period to be leave without pay. On 3-12-1987 he was served the order of the Bank contained in a memo informing him that since it was reported to the Bank authorities that he was arrested and kept in Police/Judicial Custody from 4-9-1987 to 14-9-1987 which fact was concealed in his leave application filed earlier, the Bank had lost confidence in him. Accordingly his service at the Bank stood terminated with immediate effect. This memo was issued enclosing therein a cheque for Rs. 1041 being the one month's pay and allowance in lieu of notice.

4. The grievance of the workman is that the memo/order dated 3-12-1987 (Ext. M-5) terminating his service is not a simpliciter termination but had cast serious aspertion on his conduct and integrity for which there was no basis since he had no notice of such allegations to reply to before the order was passed, the order was not tenable in law being violative of the principle of natural justice. In consequence, he need be reinstated to the post with all back wages.

5. In the written statement filed by the Bank it is stated that the appointment of the workman was on a probation for a period of 6 months, as such, he had no right to the post. Therefore, an order of reinstatement can never be made in this particular case and that the authorities have no malice and did not act arbitrarily, but having received the information from the S.P., C.B.I. (SPE, S.C.P. Calcutta) in a confidential communication that this workman was arrested on 4-9-1987 on a criminal charge and was produced before the learned Chief Metropolitan Magistrate, Calcutta on 5-9-1987 to Police Custody for 5 days. Thereafter he was produced before the Court again on 9-9-1987 and was remanded to judicial Custody till 14-9-87. The allegation against Shri Saha was that he, in false pretence was claiming refund of income tax on behalf of some 6 persons claiming himself to be their representative and in that connection made fabrication of some documents. As these facts were not reflected in the leave application, the authorities lost confidence in the workman and terminated his service with immediate effect by their order dated 3-12-1987.

6. The exhibities on which the management relies to substantiate their bonafides includes Ext. M-4 which is a letter from the S.P., C.B.I., Calcutta to the Chief Manager, Central Bank of India, Calcutta-1, wherein the Bank authorities were requested for taking necessary action against the employee. In the last paragraph of that letter the Police requested that they be informed about the action taken by the Bank against Shri Saha on the basis of evidence already collected against him. Ext. M-4 is dated 11-12-1987. Another letter from the S.P., C.B.I. to the Zonal Manager, Central Bank of India, Calcutta-1 was also issued on 20-11-1987 giving him the similar information and requesting the Zonal Manager to take disciplinary action against Shri Saha and for communication of the decision to him. This request was made when the matter was still under investigation.

7. The workman stated in his examination in chief that he had been acquitted of the charges in that case. The statement that he had been acquitted unconditionally from the charges in that case is not questioned in the cross-examination, nor any certificate showing his conviction or copy of the order sheet showing continuance of the case in the Court has been filed by the management, rather the workman had filed the order of the Court of the Chief Metropolitan Magistrate Ext. W-2 that he had been discharged from the bail bond.

8. This Tribunal is called upon to adjudicate if the termination of the services of Shri Deb Kumar Saha was justified. Admittedly the services of Shri Saha were terminated while he was on probation and it was terminated as per the order dated 3-12-1987 (Ext. M-5) on the ground that the Bank had lost confidence in him, since it was reported to the Bank authorities that he was arrested and was kept in Police/Judicial Custody from 4-9-1987 till 14-9-1987 which fact Sri Saha had concealed to mentioned in his leave application.

9. Mr. Sarkar, learned counsel appearing for the Bank relied on the case of Ajit Singh and Ors. Vs. State of Punjab and Anr., reported in AIR 1983 SC 494 in support of his proposition that since the workman was in his probation,

he had no right to the post and his services could be terminated by the impugned order. The facts of that case may not have any bearing on the facts of this case. In the case referred to, 11 persons were appointed by the Board of Trustees on probation of one year who had completed the period of one year without anything found against them and continuing thereafter, and even received first increment. Their jobs were subsequently terminated by the Director of Local Government, Punjab in exercise of the powers conferred by Rule 7 of the concerned 1978 Rules only to be filled up by another set of 11 persons. The argument canvassed on behalf of the Punjab Town Improvement Trust was that under the Rules, the probation of the appointees being direct recruits was for a period of 2 years and the order which showing only for one year as the period of probation was a typographical error. Since the persons during the probation have no right to the post it was open to the authorities to pass the impugned order. The Hon'ble Supreme Court in that case held that even though the period of 2 years was there, nothing preventing the authorities to reduce the period of probation to one year at the time of appointment. In the facts and circumstances of the case, however the Hon'ble Supreme Court was satisfied that the whole exercise was to get rid of these 11 persons and to bring in another set of persons in their place which was an arbitrary action on the part of the authority and violative of the guarantee of the equality of opportunity enshrined in Article 16 read with Article 14 of the Constitution. Hon'ble Supreme Court accordingly quashed and set aside that order and declared that all he petitioners be deemed to be in continuing in service and be forthwith reinstated and directed that from the date of the order the petitioners would be entitled to receive the full salary, while for the period during which they actually did not work, they would have allowed only half the salary.

11. As I have already stated the facts involved in that case is quite different from the facts of the case presently in hand. The Hon'ble Supreme Court in that case however made certain observations in regard to the scope of probation in the service jurisprudence which are very essential and quoted below.

> "7. When the master servant relation was governed by the archaic law of hire and fire, the concept of probation in service jurisprudence was practically absent. With the advent of security in public service when termination or removal became more and more difficult and order of termination or removal from service became a subject matter of judicial review, the concept of probation came to acquire a certain connotation. If a servant could not be removed by way of punishment from service unless he is given an opportunity to meet the allegations if any against him which necessitates his removal from service, rules of natural justice postulate an enquiry into the allegations and proof thereof. This developing master servant relationship put the master on guard. In order that an incompetent or inefficient servant is not foisted upon him because the charge of incompetence or inefficiency is easy to make but difficult to prove, concept of probation was devised. To guard against errors of human judgment in selecting suitable personnel for service, the new recruit was put on test for a period before he is absorbed in service or gets a right to take post. Period of probation gave a sort of locus poenitentiae to the employer to observe the work, ability, efficiency, sincerity and competence of the servant and if he is found not suitable for the post, the master reserved a right to dispense with his service without anything more during or at the end of the prescribed period which is styled as period of probation. Viewed from this aspect, the Courts held that termination of service of a probationer during or at the end of a period of probation will not ordinarily and by itself be a punishment because the servant so appointed has no right to continue to hold such a post any more than a servant employed on probation by a private employer is entitled to (See Purshottam Lal Dhingra v. Union of India, 1958 SCR 828; AIR 1958 SC 36). The period of probation therefore furnishes a valuable opportunity to the master to closely observe the work of the probationer and by the time the period of probation expires to make up his mind whether to retain the servant by absorbing him in regular service of dispense with his service ....."

11. There is no jota of doubt in the proposition put forward by Sri Sarkar that if a probationer has no right to the post, the management can always terminte his service if he is not satisfied that he is a fit person to be continued in the said post. From the paragraph quoted from the judgement of the Hon'ble Supreme Court it stands out that the period of probation gave a sort of locus poenitentiae to the employer to observe the work, ability, efficiency, sincerity and competence of the servant and if he is found not suitable for the post, the master reserved the right to dispense with his service without anything more during or at the end of the prescribed period which is styled as the period of probation.

12. In the present case the allegation made against the workman is not concerning his ability, efficiency, sincerity or the competence of the servant in to the post in which he was being tried to find out his suitability for the post. The management made up its mind to terminate his service on a ground extreneous to these conditions basing on a report they received from the Police Authorities while the matter was still under investigation. Since the letter of termination is not a termination simplicitor and alleged lack general integrity in his part, it was incumbent on the part of the management to call for an explanation from the workman to the alleged conduct before taking any measure on the report and terminating his services. It is more so because the workman has stated that he was not aware while he was arrested but he has been acquitted later unconditionally.

13. In the Express Newspaper Vs. The Labour Court, Madras and Another, reported in 1964 (I) LLJ 9, the Hon'ble Supreme Court of India held thus

> ". ..... It appears clear to say that without anything more an appointment on probation for 6 months gives the employers no right to terminate the service of an employer before 6 months had expired, except on the ground of misconduct or other sufficient reasons, in which case even the service of permanent employee could be terminated ....."

Accordingly, if the management thought that the present workman has misconducted himself or there has been sufficient reasons which even could be the reason for a permanent employee to loose his job, an unilateral action on their part on their subjective satisfaction on the report of an outside agency could not by itself be justified in terminating the service of the workman unless the workman had been given due opportunity to present his case in his defence countering the allegation, which has not been done in this **case.**

14. The law is well-settled that no materials should be relied on against any one without the latter having been given the opportunity to explain it (a reference can be made to a decision of the Hon'ble Supreme Court in Sur Enamel and Stamping Works Ltd. Vs. Their workmen reported in AIR 1963 SC 1914=1963 (II) LLJ 367)

15. Mr. Sarkar further argued that in any case the workman cannot be reinstated even if the Tribunal found that the termination was illegal and contrary to law since the Bank had already lost confidence in the said employee. I am not in a position to accept the contention of Mr. Sarkar on the facts and circumstances of this case. To create a harmonious relationship between the employer and the employee, the Apex Court has consistently held that in cases of wrongful or illegal dismissal the normal rule is that the employee should be reinstated. A reference can be made in this regard to a case between the Workmen of Assam Match Co. Ltd and Presiding Officer of Labour Court of Assam and Anr. reported in 1973 (II) LLJ 279.

It is true that the reinstatement should not be awarded where the management justifiably alleges that they have ceased to have confidence in the concerned employee. It was so held in Binny Ltd. Vs. Their workmen reported in 1972 (25) FLR 74 (Supreme Court), particularly when the employee held an office of trust and confidence as is held by the Hon'ble Supreme Court in a case reported in 1971 (23) FLR 241. Accordingly, when the management urges that the particular employee should not be reinstated but be paid compensation in lieu thereof, it is incumbent upon them to justify the ground for loosing confidence in the particular employee. In the present case, as I have already indicated in this Award, the report from the Police alleging against the employee about which the employee had no idea and had no opportunity to explain such allegations in the said report, could not have acted upon by the management against him. There was no other material except that report and as the report could be a justifiable material on the basis of which the management could form its opinion in loosing confidence against his employee. In other words, there is no legally acceptable material on the basis of which the management could genuinely be said to have based its consideration in loosing confidence in the integrity of the workman and allege against his reinstatement. A reference can be made to the case of the management of Panitala Tea Estate Vs. Their Workmen reported in 1971 (22) FLR 271 (Supreme Court) in this regard. Accordingly in the present case, I refuse to depart from the general rule of reinstatement and to award compensation in lieu thereof.

16. Lastly, Mr. Sarkar argued that if at all there shall be reinstatement of the workman, he should not be allowed to continue in the office after the period of 6 months intended for his probation. I also do not accept this proposition in law. I have already indicated what 'probation' is actually meant for and how this concept was brought into the service jurisprudence by quoting a paragraph from the Judgement of the Hon'ble Supreme Court.

> The chief characteristic of the contract of service on probation is that the employer can terminate the service of the probationer without assigning any reason on the ending of the period of probation. If at the end of the period of probation, no action is taken by way of confirmation or by way of termination, the employee continues in service. There is no such thing as automatic confirmation if confirmation was not given. A probationer could not also claim automatic confirmation on the expiry of the period of probation unless the appointment order provides that the appointee shall stand confirmed in the absence of any order to the contrary. If he is allowed to continue in service after expiry of the period of probation, he would continue as a probationer and acquires no substantive right to hold the post. This was held by the Hon'ble Supreme Court in Express Newspaper Vs. Labour Court, Madurai, reported in 1964 (I) LLJ 9.

17. For whatever has been stated in the earlier paragraphs, there is no automatic termination of service of the workman on completion of the probationary period. Therefore, to say that he is reinstated untill the period of probation expires, will not be tenable in law. As I have already stated quoting the Hon'ble Supreme Court, if no order is passed after the probationary period, he simply continues as a porbationer and not automatically made permanent in the post.

18. There is no material on record to show that the workman was gainfully employed for any period after the termination of his service.

19. In the result, I answer this reference by holding that the termination of the services of Sri Deb Kumar Saha in the facts and circumstances of this case was not justified and he is entitled to be reinstated in service with full back wages.

Dated, Calcutta,

The 22nd December, 1995.

K. C. JAGADEB ROY, Presiding Officer

नई दिल्ली, 12 जनवरी, 1996

का. आ. 335.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सैन्ट्रल वेयर हाऊसिंग कारपोरेशन, भोपाल के प्रबन्धतन्त्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-1-96 को प्राप्त हुआ था।

[संख्या एल-42012/1/89-आई आर (विविध)]

बी. एम. डेविड, डैस्क अधिकारी

New Delhi, the 12th January, 1996

S.O. 335.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of Central Ware Housing Corporation, Bhopal and their workmen, which was received by the Central Government on the 9-1-96.

[No. L-42012/1/89-IR(Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR (MP)

Case No. CGIT/LC(R)(90)/1989

BETWEEN

Shri S.B. Singh S/o Shri Jagannath Singh Bibia Karanpur, Shitala Ganj Pratapgarh (UP).

AND

The Regional Manager Central Ware Housing Corporation, Regional Office, 52-53, Amar Niwas, New Market, T.T. Nagar, Bhopal (MP)-462003.

PRESIDED IN :

By Shri Arvind Kumar Awasthy.

APPEARANCES :

For Workman : Shri A.S. Gaharwar, Advocate.

For Management : Shri R. Menon, Advocate.

Industry : Ware Housing Corpn.

DISTRICT : Bhopal (MP)

AWARD

Dated : December 26, 1995

This is a reference made by the Central Government, Ministry of Labour, vide its Notification No. L-42012|1|89-IR(Vividh) dated 2nd May, 1989, for adjudication of the following industrial dispute :

SCHEDULE

"Whether the dismissal of Shri S.B. Singh, Ex-chowkidar, Central Warehouse Burhanpur by the management of Central Ware Housing Corporation, Bhopal w.e.f. 17-11-1986 is justified. If not, what relief is the workman entitled to ?"

2. The case of the workman is that he is an Ex-serciceman and he was appointed as Chowkidar with effect from 1-12-1982; that the workman was regular; arised and confirmed on a permanent post with effect from 11-5-1984 and thereafter continued till 17-11-1986; that the service of the workman was terminated without notice enquiry or compensation. The workman has prayed for reinstatement with full back wages.

3. The case of the management is that the workman Shri Suresh Bahadur Singh was appointed as Chowkidar on dailiy wages basis w.e.f. 1-12-1982. However, the applicant was on probation for a period of one year with effect from 20-7-1985 and he was not found suitable; that as per terms of probation the services of the applicant workman was terminated which is not covered by the definition of retrenchment and as such workman is not entitled for any relief, whatsoever.

4. The management has filed Office Memorandum dated 8-7-1985 and joining report of the workman dated 20-7-1985 to show that the workman was appointed on probation for one year with effect from 20-7-1985. The workman remained absent and he has not led any evidence documents filed by the management further goes to show that the workman was not found fit and his work was not satisfactory during the period of probation. Consequently, termination of the workman with effect from 17-11-1986 is held justified. Reference is answered in favour of the management. Parties to bear their own costs.

ARVIND KUMAR AWASTHY Presiding Officer

नई दिल्ली, 15 जनवरी, 1996

का. आ. 336.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ऑयल एवं नेचरल गैस कार्पोरेशन लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक

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विवाद में, केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-1-96 को प्राप्त हुआ था।

[संख्या एल-30012/30/88-डी. 3 (बी)/आई. आर. (कोल-1)]

ब्रज मोहन, डैस्क अधिकारी

New Delhi, the 15th January, 1996

S.O. 336.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Oil and Natural Gas Corporation Ltd. and their workmen, which was received by the Central Government on 12-1-96

[No. L-30012|30|88-D. 3. B|IR(Coal-D)]

BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, PANDU NAGAR, KANPUR

Industrial Dispute No. 14 of 1989

In the matter of dispute

BETWEEN

Rakesh Kumar
son of Sewak Ram
494 Karburha Chhabilbagh
Dehradun.

AND

The Chairman
Oil & Natural Gas Commission
Tel Bhawan, Dehradun

AWARD

1. Central Government, Ministry of Labour, vide its notification no. L-30012|30|88-D 3(B) dt. 17-1-1989, has referred the following dispute for adjudication to this Tribunal :—

Kya Tel Aur Prakratik Gas Ayog Dehradun ke prabandtantra ki, Sri Rakesh Kumar Boolpurva Karmkar (Safaiwala) Ki sewaein 1-9-87 se samnat karne ki karvawai nyayochit hai ? Yadi nahi to karamkar kis anutosh ka haqdar hai ?

2. In his claim statement, the concerned workman has stated that he was appointed as continuous sweeper in the opposite party O. N. G. C. Dehradun on 1-9-84 and continuously worked upto 31-8-87. On 24-8-87, he was called for interview for appointment as Attendant Gr. III. However, the workman was not given appointment inspite of his interview. His services were illegally terminated without payment of notice pay and retrenchment compensation.

3. The opposite party has filed a lengthy reply, substance of which is that the concerned workman was not the direct employee of theirs. Instead he was a contract labour of Kaloo Shahi His contract came to an end on 31-8-87. Accordingly management stopped taking work from him after 31-8-87.

4. In his rejoinder, the concerned workman has denied the allegations that he was a contract labour.

5. In support of his case, the concerned workman has filed his affidavit whereas the management has filed the affidavit of Pradeep Sharma, Chief Manager Personnel and both of them have also been cross examined. Apart from this the management have filed Ext. M-1 to M-7, whereas the concerned workman has filed Ext. W-1 to W-10.

6. The first point which needs consideration is as to whether the concerned workman was a contract labour. In support of this averment, the management has examined Pradeep Sharma, M.W. 1. In his cross examinatinn he has stated that contract of Kalloo Shahi came to an end w.e.f. 1-9-87, and from that day no work was taken from the concerned workman.

7. Ext. M.1 to M.6 are papers which are in the nature of sanction order in which the concerned workman has been shown a contract labour of Kalloo Shahi. Ext. M.5 is the so called Contract. In rebuttal the concerned workman has filed Ext. W-2 to W-9 which are in the nature of certificate issued by various managers of the opposite party to show that the concerned workman has worked at their residence for the periods mentioned in these papers. Apart from this there is Ext. W-10 an interview letter given by the management to the concerned workman by which he was called for interview. In my opinion, had the concerned workman been not an employee of the opposite party he would not have been called for the interview. Apart from this there is certified copy of judgment of Allahabad High Court dt. 11-10-90 in writ petition no. 23588 of 87. It appears the workers of the opposite party placed in similar circumstance in which the concerned workman at present is placed had carried the matter before the Hon'ble High Court regarding the dispute about their status i.e. of Contract Labour or employee of the opposite party. In this case Hon'ble High Court had treated all these petitioners as direct employees of the opposite party. For the parity of reasons concerned workman too should be help to be the direct employee of the concerned management.

8. In view of above discussions, I have no hesitation in holding that the concerned workman was not actually a contract labour of Kalloo Shahi. Instead he was direct employee of the management as has been stated by Rakesh Kumar in his evidence. He has stated that O. P. Gorkunda had appointed him.

9. Now the next point which falls for consideration is as to whether the concerned workman has completed 240 days in a calendar year. Ext. W-2 to W-9 are the certificates given by the opposite party to the concerned workman relating to period 1984 to June 1985, which go to show that the concerned workman had actually worked for 220+ days. It may be mentioned that number of working days relating to January, 1985, is missing. However, the opp. party has filed the number of days the concerned workman has worked in which it has been shown that in the month of January, 1985, the concerned workman has worked for 31 days. In this way the concerned workman has completed for more than 240 days continuously in a calendar year. As such provisions of section 25F of Industrial Disputes Act, should have been complied with in this case which admittedly has not been done. Hence, termination of services of the concerned workman is bad in law. It is held accordingly.

10. Accordingly my award is that the concerned workman will be reinstated in service. However, he shall not be entitled for back wages because he had failed in test and also because reference is belated.

11. Concerned workman shall also get Rs. 100 as costs of the case.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 16 जनवरी, 1996

का. आ. 337.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महानगर टेलीफोन निगम लि. के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2 बम्बई, के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-1-96 को प्राप्त हुआ था ।

[संख्या एल-40012/23/92-आई. आर. (डी. यू.)]

के. वी. बी. उन्नी, डैस्क अधिकारी

New Delhi, the 16th January, 1996

S.O. 337.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2, Bombay as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of MTNL and their workmen, which was received by the Central Government on 15-1-96.

[No. L-40012/23/92-IR(DU)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT :

Shri S. B. Panse, Presiding Officer.

Reference No. CGIT-2/88 of 1993

Employers in relation to the management of M.T.N.L., Bombay

AND

Their Workmen.

APPEARANCES :

For the Employer : Mr. S. I. Shah, Advocate.

For the Workmen : Mr. M. B. Anchan, Advocate.

Mumbai, dated 4th January, 1996

AWARD

The Government of India, Ministry of Labour by its order No. L-40011/23/92-IR(DU), dated 7-12-93 had referred to the following Industrial Dispute to the Tribunal for adjudication :

"Whether the action of the management of Mahanagar Telephone Nigam Limited, Bombay in retrenching S/Shri S. N. Naik, V. G. Naik, B. M. Wagh and Mogaveera N. M. w.e.f. 1-5-1991 without complying the provision of I.D. Act, 1947 is in the guise of reducing the status of Departmental Canteen from Type 'C' to 'D' in violation of Section 9A of the I.D. Act, 1947 is just, proper and legal ? If not, to what relief are the workmen entitled to ?"

2. The General Secretary for Bombay Telephone Canteen Employees Association filed a statement of claim. It is averred that the Government of India issued administrative instruction on Departmental Canteen in Government Offices and Industrial Establishments. It specifically provides that for the specific number of employees taking the facilities of the departmental canteen there should be specific type of canteen. It is clearly mentioned in GSR dated 23-12-80 that when the employees are between 500 to 699 there should be 'B' type canteen.

3. The workers S. N. Naik, V. G. Naik, B. M. Wagh and N. M. Mogaveera joined the canteen at Vile Parle Telephone Exchange on 4-4-83, 1-9-82, 1-9-82 and 23-8-82 respectively. The first two and the last were appointed as the bearers and Wagh was appointed as a wash boy. No appointment letters were issued. Their record is clean till the date of their retrenchment.

4. The Union contended that in fact there were more than 900 employees working at Vile Parle Telephone Exchange and as such the canteen should have been of 'A' type employing minimum 19 employees. Instead of that there were 11 employees only.

5. On 3-2-88 the employer shifted about 350 workers of the Vile Parle Telephone Exchange to their new office at Jeevan Sewa Extension Building, Santacruz. At the same time these four workers and one S. K. Shetty were shifted there. They started to work in the said canteen in that location. They continued to work there till 31-3-90. Thereafter

the employer gave the said canteen to the contractor and the workers were shifted to Vile Parle Telephone Exchange. At Vile Parle Telephone Exchange these workers were retrenched from service illegally. Infact at that time the canteen was not of a 'D' type as alleged by the employer. Infact the canteen should have been of 'B' type employing fifteen employees.

6. The association pleaded that there are more than 100 employees working in Vile Parle Telephone Exchange Building. In the canteen manufacturing activities such as making of tea, coffee, potato vada and other eatable are carried out. Hence it is a factory. In the said premises electrically operated grinding machine is used for grinding. There is a water heater and water coolers. As such the provisions of Chapter V-B of the Industrial Disputes Act are applicable to the said canteen. It is averred that no permission from the proper government was taken for retrenching these four workmen. It is submitted that there is no compliance of section 25F of the Industrial Disputes Act. It is averred that the workers were not paid compensation at the time of retrenchment. It is therefore, the action is void ab-initio. It is submitted that under such circumstances the workmen are entitled to reinstatement in service with full back wages and continuity.

7. The management resisted the claim by the written statement Ex.-4. It is averred that as per the instructions contained in Brochure on departmental canteen rule No. 7 establishments for canteen/Tiffin rule dated 13-4-67, type of canteen 'D' should have maximum eight civil employees, and the number of employees working in the building is 100 to 249. It is averred that at a relevant time the employees were below 250. It is therefore a resolution was passed in a departmental canteen committee on 21-3-91 for treating the status of canteen from 'C' type to 'D' type. A reduction of the staff strength was also seen from the reduction in daily sale of canteen goods. Also due to the reduction of collection the canteen was not able to generate the 30 per cent profit which they were supposed to generate for their 100 per cent. Since the department is giving in 70 per cent of the wage.

8. It is averred that the canteens are excluded from the definition of the Industry under section 2(j) of the Industrial Disputes Act. As such the Factories Act is not applicable to the present dispute. It is denied that the management wants to give the canteen on a contract basis. It is averred that the Mahanagar Telephone Nigam Limited has never violated the directions of the Supreme Court and had complied with the provisions of the Act. It is averred that the four employees were retrenched on the principle of last come first go basis and they were given one month's notice. It is denied that the said retrenchment was unfair, unjust and arbitrary. It is submitted that as their services were no longer required they were retrenched from the services and the action is just, legal and proper. It is averred that under such circumstances the claim made out by the union is not tenable.

9. The issues that fall for my consideration and my findings thereon are as follows :

Issues	Findings
1. Whether the departmental canteen run by the Vile Parle Telephone Exchange is excluded from the definition of the Industry as alleged by the management ?	No
2. Whether the action of the mgt. without complying the provisions of retrenchment while retrenching the four workmen is justified ?	No
3. Whether the reducing the status of departmental canteen from type 'C' to 'D' in violation to section 9A of the Industrial Disputes Act is just, proper and legal ?	No
4. Whether the action of the Management retrenching the four workmen is just, legal and proper ?	No
5. If not, to what relief the workmen are entitled to ?	As per Final Order

REASONS

10. To bolster up the case the union examined Narasimha Mutta (Ex.-6) and S. N. Naik (Ex.-7) the two workers. They filed purshis (Ex.-8) declining to examining other two workers as their case is identical to that of the earlier two witnesses. They relied upon the documents which are filed on the record. As against this the management examine R. P. Pande (Ex.-12).

11. It is the contention of the management that the canteen run departmentaly in Central Government Offices are excluded from the definition of Industry under Section 2(i) of the Industrial Disputes Act of 1947. Section 2(j) of the Act defined what is meant by Industry. The definition gives the meaning of Industry and also includes certain things in the Industry. After the case of Bangalore Water Supply and Sewerage Board v/s. A, Rajappa, 1978 LAB IC 467 the question to be asked is not what is Industry but it is what is not an Industry.

12. It is tried to argue on behalf of the management that as per the rule No. 16(II) of Departmental Canteen rules formed in the I.D. Act vide letter dated 18-2-82 the canteen which is run department in the Central Government Offices are excluded from the definition of Industry. No such rules were produced before me. Even for the sake of argument if it is accepted they are there it is argued on behalf of the union, the Ministry of Labour and Rehabilitation of India, New Delhi addressed a letter to Shri Samar Mukherjee, M.P. wherein it is observed that there was a question before them whether departmental canteen should be treated as Industry or not under the I.D. Act. After due consideration they found that unless expectation is proved under the I.D. Act canteen will be treated uner the definition of Industry under the I.D. Act. As this is so it has to be accepted that the government had taken decision to treat these canteens as an Industry. Therefore the alleged rule had no meaning.

13. The Mahanagar Telephone Nigam Limited is a Limited Company incorporated under the Companies Act 1951. As the M.T.N.L. is an Industry the Vile Parle Telephone Exchange is an Industrial Establishment. Admittedly in the said canteen different eatable articles were prepared, electricity is used for grinding and water heating and cooling. The canteen is run for the welfare of the industrial workers. It is part and parcel of the Industrial Establishments and therefore is an industry within the meaning of Section 2(i) of the Industrial Disputes Act. It has to be said that it is a factory under the factories Act of 1948.

14. There was an appeal No. 21 of 89 in writ petition No. 3298 of 1988 between Bombay Telephone Exchange Employees Association v/s. M. C. Venkatraman and Others Their Lordships while deciding the matter on the submissions made by the Learned Advocates have observed :

> "An apprehension was voiced on before of the appellant that in case the dispute goes before the Competent Authority under the relevant statute, and objection might be raised on behalf of the respondent authorities that since the members of the Association are employed in canteen run departmentally by the respondent Corporation which is State, the said Competent Authority would not have jurisdiction to adjudicate the dispute. We do not see any valid reason for the entertainment of such apprehension nor have any doubt that even such objection is raised it is bound to meet its pre-destined fate. However to allay the apprehension , a statement has been made on behalf of the respondent authorities that no such objection would be taken before the Competent Authority."

For all these reasons it has to be said that the departmental canteen of M.T.N.L. is an industry within the meaning of Section 2(i) of the I.D. Act.

15. Narasimha Mutta (Ex.-6) and S. N. Naik (Ex.-7) affirmed that there were 900 employees at Vile Parle Telephone Exchange initially. The management had to maintain the canteen of 'A' type having minimum 19 employees. However, there were 14 employees. On 3-2-1988 out of these employees the employer shifted 350 employees to new office at Jeevan Seva Extension Building, S. V. Road, Santacruz. At the same time five employees including these four workers

were shifted to the said canteen along with that one was S. K. Shetty. They admittedly worked there till 31-3-90. So far as these facts are concerned they are corroborated by R. P. Pande the witness for the management.

16. Narasimha and Naik affirmed that on 31-3-90 the employer asked these four workers to report to the departmental canteen of Vile Parle Telephone Exchange as the canteen at Santacruz was given on contract basis which is against the principles. They affirmed that they were illegally retrenched from the services from 1-5-91. It was on the ground that the departmental canteen at Vile Parle which was of 'C' type was converted into 'D' type. They affirmed that this conversion was itself illegal and they should not have been retrenched. These two witnesses were not cross-examined by the management. Under such circumstances there is no reason why the testimony of these two witnesses should not be relied upon. No doubt R. P. Pandey had deposed for the management and affirmed that there was a resolution of the canteen committee to convert canteen from 'C' type to 'D' type and on this basis the action of retrenchment was carried out. While doing this conversion there should have been a record to show that particular employees were working on that exchange and there was necessary to convert the canteen in the particular category. No such record is adduced. Even for the sake of argument it is accepted that they were authorised to make such change in the category of canteen the action cannot be said to be justified for the following reasons.

17. It is not in dispute that these four workmen were employed somewhere in 1982-83. They were continuously in service till their retrenchment. It is not the case of the management that they have not worked for 240 days in 12 months. It is affirmed by these two witnesses for union that they were doing the job of a regular employee. It can be further seen that it is not in dispute that when these workers were retrenched there were more than 100 employees employed in the said exchange. They were taking the benefit of the canteen.

18. Pande in his cross-examination admits the position that the workers were not given three months notice when they were retrenched as contemplated under section 29N of the Industrial Disputes Act but the notice was of one month. Chapter V-B of the Industrial Disputes Act deals with special provisions for retrenchment and closure of certain establishments. It is clear from section 25N of the Act that then there are more than 100 employees then while effecting the retrenchment three months notice has to be given. It further states that the prior permission from the appropriate government is required to be taken before such retrenchment. No such permission is taken in this particular matter. It can be further seen that these workmen were not paid retrenchment compensation as contemplated u/s. 25F of the I.D. Act. It is well settled law that the provisions of retrenchment are mandatory. Thus non-compliance declares the action invalid and void ab initio. As this is so it has to be said that the retrenchment in respect of these four workmen is void.

19. From the testimony of the witnesses for the union and the management it is very clear that for a particular number of employees there should be particular number of employees in the canteen. It is argued on behalf of the union that the canteen at Vile Parle should have been of 'B' type. Pande admits that today there are 479 workers in the said exchange and only six employees working in that canteen. Looking to the number of the employees working there the canteen should have been of 'C' Type. It is tried to argue that they were transferred to Vile Parle and then they were found as a surplus. Looking to the number of the employees working in that exchange they were removed. In fact if that would have been so they should not have been transferred from Santacruz where they were taken.

20. Mr. Anchan, the Learned Advocate for the Union argued that when the status of the canteen was changed from 'C' type to 'D' type the management had not issued 21 days notice to the workmen as required by the Industrial Disputes Act. In fact the particular number of employees required particular number of canteen staff in the exchange. That appears to be the service condition. This service condition was changed by converting the canteen from 'C' type to 'D' type without giving a notice contemplated under the Act. This is illegal and not justified.

21. Narasimha and Naik affirmed that the canteen at Santacruz was given to the contractor and therefore they were transferred from that place of Vile Parle. So far as this statement is concerned as there is no cross-examination it goes un-challenged. It appears to me that the management had no good intention to transfer these workmen from that exchange to Vile Parle and ultimately retrenching them. While effecting such transfers they would have been what is likely to be the consequences of such transfer. But they had not seen so.

22. It is tried to argue on behalf of the management that the workmen had not adduced evidence to show that after retrenchment they tried to get the employment but could not succeed and they are not gainfully employed. In fact this has to be proved by the management, with a view that if the tribunal comes to the conclusion that the action is illegal they should not be paid pack wages. But here there is no such evidence. Under such circumstances I record my findings on the issues accordingly and pass the following order :

ORDER

1. The action of the management of Mahanagar Telephone Nigam Limited, Bombay in retrenching S/Shri S. N. Naik, V. G. Naik, B. M. Wagh and Mogaveera N. M. w.e.f. 1-5-1991 without complying the provisions of the I.D. Act of 1947 is in the guise of reducing the status of departmental canteen from type 'C' to 'D' in violation of section 9A of the I.D. Act of 1940 is not just, legal and proper.

2. The management is directed to reinstate these four workmen in service.

3. The management is directed to treat them in continuity in service and pay full back wages within three months from today.

4. No order as to costs.

S. B PANSE, Presiding Officer

नई दिल्ली, 16 जनवरी, 1996

का. आ. 387.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूनियन बैंक ऑफ इंडिया के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में, केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-1-96 को प्राप्त हुआ था।

[संख्या एल-12012/231/91-आई. आर. बी. 2]

ब्रज मोहन, डैस्क अधिकारी

New Delhi, the 16th January, 1996

S.O. 338.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of Union Bank of India and their workmen, which was received by the Central Government on 12-1-96.

[No. L-12012/231/91-IR(B-II)]

BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, PANDU NAGAR, KANPUR

Industrial Dispute No. 10 of 1992

In the matter of dispute :

BETWEEN

General Secretary,
Union Bank Employees, Union,
621/N/33 Murari Nagar, Faizabad Road,
Lucknow.

AND

Assistant General Manager,
Union Bank of India,
Hotel Clarks Awadh,
M. G. Road, Lucknow.

AWARD

1. Central Government, Ministry of Labour, vide its notification No. L-12012/231/91-I.R.B-2, dated nil has referred the following dispute for adjudication to this Tribunal :—

Whether the action of the Dy. General Manager Union Bank of India Lucknow in refusing the claim of Shri Rafiullah part-time Sweeper for his regularisation within the terms of Circular No. 2188 dated 20th August, 1980 is justified and legal. If not, to what relief is the workman entitled to ?

2. It is unnecessary to give full facts of the case as the concerned workman/union did not turn up despite issue of notice. It thus appears that neither the Union nor the concerned workman is interested in the case.

3. In view of above, the reference is answered in affirmative. Consequently the concerned workman is not entitled for any relief.

4. Reference is answered accordingly.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 16 जनवरी, 1996

का. आ. 339:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एल. आई. सी. ऑफ इंडिया के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-1-96 को प्राप्त हुआ था।

[संख्या एल-17012/22/87 डी 4 ए-आई. आर. बी. 2]

ब्रज मोहन, डैस्क अधिकारी

New Delhi, the 16th January, 1996

S.O. 339.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Hyderabad as shown in the Annexure in the industrial dispute between the employers in relation to the management of L.I.C. of India and their workmen, which was received by the Central Government on the 12th January, 1996.

[No. 17012/22/87-D.IVA/IR(B-II)]

BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT HYDERABAD

PRESENT :

Sri A. Hanumanthu, M.A.,LL.B., Industrial Tribunal-I.

Dated, 9th day of November, 1995

Industrial Dispute No. 8 of 1994

BETWEEN

Sri N. Venkateswara Rao,
C/o Palasa Cashew Processors Pvt. Limited,
Palasa, Srikakulam District-532221.
... Petitioner.

AND

The Zonal Manager,
Life Insurance Corporation of India,
South Zone Mount Road,
Madras.
... Respondent.

APPEARANCES :

M/s. G. Vidya Sagar, G. Ravi Mohan, Advocates—for the Petitioner.

Sri I. Dakshina Murthy, Advocate—for the Respondent.

AWARD

The Government of India, Ministry of Labour, by its Order No. L-17012/22/87-D.IV(A), dated 19th January, 1994 referred the dispute under Section 10(1)(d)(2A) of the Industrial Disputes Act, 1947 for adjudication mentioned in the schedule which reads as follows :

"Whether the action of the management of Life Insurance Corporation of India in imposing the penalty of removal from service with effect from 19th March, 1983 on Sri N. Venkateswara Rao is legal and justified, if not, to what relief, the workman is entitled ?"

This reference has been registered as Industrial Dispute No. 8 of 1994 on the file of this Tribunal.

2. (a) The facts in brief, leading for making this reference are as follows.—The Petitioner N. Venkateswara Rao was appointed as Assistant in Life Insurance Corporation of India in May, 1961. He was promoted as Higher Grade Assistant in January, 1965. He was transferred to Divisional Office, Visakhapatnam in January, 1976. The Petitioner was issued with a charge sheet dated 29th October, 1976 alleging that the fraudulantly and unauthorisedly encashed the cheque for Rs. 944.80 issued in favour of the Policy holder Sri Babbadi Kurminaidu towards a loan and that he also managed to take cash of Rs. 70.00 on 27th February, 1976 towards the balance of loan under the Policy of Sri A. Gafoor, Development Officer, Veeraghattam forging his signatures on the loan papers. The Petitioner submitted a detailed explanation (Ex. W1) to the said charge sheet on 9th November, 1976. Thereafter, the Divisional Manager, L.I.C. by his order (Ex. W2) dated 16th November, 1976 appointed Sri N. S. Murthy, Assistant Divisional Manager (Development) as Enquiry Officer to conduct the enquiry into the charges. The Enquiry Officer by his letter dated 17th November, 1976 (Ex. W3) informed the Petitioner that the enquiry was scheduled to 3rd December, 1976. Thereafter the Enquiry Officer by his letter (Ex. W4), dated 1st December, 1976 informed the Petitioner that the enquiry has been postponed. Subsequently, no enquiry was conducted against the petitioner.

(b) A Crime under Section 420, 471 read with Section 467 I.P.C. and under Section 5(1)(d) and Section 5(2) of the Prevention of Corruption Act was registered against the Petitioner. He was also prosecuted in C.C. No. 27/78 on the file of Special Judge, S.P.E. and Act (Cases), Hyderabad for the said offences. Eight charges were framed against the Petitioner in that case. The main allegations against the Peti-

tioner in that case are that the Petitioner while working as Higher Grade Assistant in the LIC Divisional Office, Visakhapatnam fraudulently encashed the cheque for Rs. 944.80 i.e. Cheque bearing No. 415074 dated 3rd September, 1976 issued by the Divisional Office, L.I.C. of India, Visakhapatnam to honour Andhra Bank Limited, Dwarakanagar, Visakhapatnam in favour of Sri B. Kurmi Naidu towards the loan against his Policy No. 37707876 by forging the signature of the payee and misappropriated that amount. It is also alleged against the Petitioner in that case that on 27th February, 1976 the Petitioner forged the signature of A. Gafoor, Development Officer, Veeraghattam on the loan papers and obtained payment of balance of Policy loan of Rs. 70.00 (against Policy No. 36339635 of Sri A. Gafoor) in cash and misappropriated that amount. After enquiry the Hon'ble Court of Special Judge, S.P.E. Cases, C.C.C., Hyderabad by his judgement dated 28th December, 1979 held the petitioner guilty of the offences under Sections 420, and 471 read with Section 467 IPC and under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act and convicted the accused petitioner and sentenced the petitioner to undergo simple imprisonment for two years under each count for the offences under Sections 420, and 471 of I.P.C. and the Petitioner was further sentenced to undergo simple imprisonment for two years and to pay a fine of Rs. 500.00 and in default to undergo simple imprisoament for one month for the offence under Section 5(1)(d) read with Section 5(2) of Prevention of Corruption Act. Both the sentences are ordered to run concurrently. Ex. W6 is the copy of the judgement in C.C. No. 27/78 dated 28th December, 1979 on the file of the Special Judge, S.P.E. and ACB Cases, C.C.C., Hyderabad. The Divisional Officer by his order dated 23rd July, 1977 (Ex. W5) placed the Petitioner under suspension in view of the criminal proceedings initiated against him. Aggrieved of the conviction and sentence imposed upon him in C.C. No. 27/78 the Petitioner preferred an appeal to the Hon'ble High Court in Criminal Appeal No. 34/80. In the appeal, the Hon'ble High Court by its judgement dated 21st April, 1982 (Ex. W7) confirmed the conviction of the Petitioner but modified the sentence. The sentence of imprisonment of two years was reduced to till the rising of the Court and imposed a fine of Rs. 500.00.

(c) After the judgement of the Hon'ble High Court in Appeal No. 34/80 the Respondent issued a charge sheet-cum-show cause notice dated 20th December, 1982 (Ex. M1) calling upon the Petitioner to explain why he should not be dismissed from service as he was found guilty, convicted and sentenced by the Competent Court for the offences which are very grave and severe in nature. The Petitioner submitted his explanation to the said show cause notice (Ex. W8) dated 31st December, 1982. The Respondent passed the final order (Ex. W9), dated 19th March, 1983 removing the petitioner from service w.e.f. 19th March, 1983. Aggrieved by that order of removal, the Petitioner preferred an appeal to the Managing Director of the Respondent-Corporation and his appeal was also dismissed under Ex. W10 dated 10th December, 1983. Thereafter, the Petitioner raised a dispute before the Assistant Commissioner of Labour and the conciliation proceedings ended in failure and failure report was submitted to the Government of India. But the Government of India did not make a reference. Then the Petitioner filed Writ Petition No. 5279/88 under Article 226 of the Constitution of India to direct the Government of India to refer the dispute for adjudication. The Hon'ble High Court of Andhra Pradesh by its judgement dated 20th December, 1993 (Ex. W11) allowed the writ petition and directed the Government of India to reconsider the question of making a reference of the Industrial Dispute. Thereafter, the Government of India by its Order dated 19th January, 1994 made this reference as stated earlier.

3. The Petitioner filed his claim statement alleging that the charges levelled against him are false, that he had been falsely implicated at the instance of his enemies, that the Respondent removed the Petitioner from service without conducting the departmental enquiry and as such it is wholly arbitrary and unjust, that the Respondent having initiated enquiry into the charges in respect of the charge sheet dated 20th December, 1976, had dispensed with the enquiry without assigning any reason and therefore the entire proceedings dated 20th December, 1982 are wholly arbitrary, illegal and unjust; that in the criminal case, the charges levelled against the Petitioner were not proved, that the petitioner was not given reasonable opportunity for defending his case in the departmental enquiry and no personal hearing was given to the petitioner before concluding the major penalty of removal from service and that the punishment of removal from service is disproportionate to the charges alleged against the petitioner. Therefore, the petitioner prays to set aside the penalty of removal from service imposed on him and to direct the Respondent-Management to reinstate the petitioner into service with continuity of service, back wages and all other attendant benefits.

4. The Respondent-Management filed counter stating that the reference is not maintainable as no provisions of the Industrial Disputes Act, 1947 has been violated and that the penalty of removal was imposed on the petitioner under Regulation 39(1)(F) of the L.I.C. Staff Regulations 1960 read with Regulation 39(4)(1) of the said Regulations. The order of removal from service was passed against the petitioner after taking into account all relevant factors and there is neither arbitrariness nor mala fide intention in passing the said order. In fact, special consideration was shown to the petitioner on his representation pleading mercy, that the orders of removal was passed instead of dismissal as otherwise he would have been deprived of terminal benefits. A memorial preferred by the Petitioner to the Chairman, L.I.C. of India was also rejected on 21st July, 1984. The charge sheet dated 29th October, 1976 issued to the petitioner ceased to be relevant after the High Court found the petitioner guilty of offences under Section 420, 467 and 471 I.P.C. read with Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act. Hence the enquiry under that charge sheet was dispensed with Regulation 39(4)(1) of L.I.C. Staff Regulations Vest the Disciplinary Authority with power to pass such order as he deems fit when an employee is convicted on criminal charges. In the instant case when the Hon'ble High Court confirmed the conviction on the petitioner of criminal charges, the disciplinary authority decided to impose the penalty of dismissal on the petitioner and therefore the charge sheet-cum-show cause notice dated 20th December, 1982 was issued to the Petitioner giving an opportunity for the Petitioner to explain his case. The Disciplinary Authority considered the replies submitted by the Petitioner and as the Petitioner failed to bring out any material to disprove the guilt, the Disciplinary Authority imposed the penalty of removal from service instead of imposing the penalty of dismissal from service. Thus the Respondent has shown a lenient consideration on the petitioner. The penalty imposed is commensurate with the prove misconduct of the petitioner. Hence the Respondent prays that the petitioner is not entitled for any relief under this reference.

5. On behalf of the Petitioner, W.W1 is examined and Exs. W1 to W11 were marked. On behalf of the Respondent M.W1 was examined and Ex. M1 is marked. The Petitioner workman got himself examined as W.W1 and he deposed to the averments in his claim statement. The Manager of P & I.R. Department, Divisional Office, L.I.C., Visakhapatnam is examined as M.W1 and he deposed to the averments in the counter. The details of the documents Exs. W1 to W11 and Ex. M1 are appended to this Award.

6. The points for consideration are as follows :

(1) Whether the action of the Respondent Management in imposing the penalty of removal from service w.e.f. 19th March, 1983 on the Petitioner N. Venkateswar Rao is legal and justified ?

(2) To what relief the petitioner-workman is entitled to ?

7. POINT (1).—Admittedly the Petitioner was working as Higher Grade Assistant in the Respondent-Corporation. He was prosecuted for the offences under Sections 420, 467 and 471 of I.P.C. read with Sections 5(1)(d) and 5(2) of the Prevention of Corruption Act in C.C. No. 27/78 and he was convicted for the said offences by the learned Special Judge for S.P.E and ACB Cases, Hyderabad on 28th December 1979. Ex. W6 is the copy of the said judgement. It is also not disputed that the Hon'ble High Court of Andhra Pradesh in Appeal No. 34/80 dismissed the appeal preferred by

the Petitioner and the conviction of the petitioner was confirmed, but sentenced of imprisonment has been modified. Ex. W7 is the copy of the judgement of the Hon'ble High Court in Appeal No. 34/80. Thereafter, the Petitioner was removed from service by the order of the Respondent dated 9th March, 1983 (Ex. W9) after issuance of show cause notice Ex. W8

8. The learned counsel for the Petitioner submits that the charges levelled against the petitioner in criminal case have not been proved, that the petitioner has been published by the Respondent without any enquiry and that the departmental enquiry commenced with the charge sheet dated 20th December, 1982 has been dispensed with without assigning any reason and therefore the punishment of removal from service imposed on the petitioner is arbitrary, uniust and against the principles of natural justice. It is not open to the petitioner to contend that the criminal charges levelled against him in C.C. No. 27/78 are not proved. As earlier stated and as seen from the judgement (Ex. W6) the charges for the offences under Sections 420, 467 and 471 of I.P.C. read with Section 5(1)(d) and 5(2) of the Prevention of Corruption Act levelled against the petitioner, have been proved and the Petitioner was found guilty of the said offences and he was convicted and sentenced to undergo simple imprisonment for two years and also to pay a fine of Rs. 500.00. The said conviction has been confirmed by the Appellate Authority i.e. the Hon'ble High Court of Andhra Pradesh by its judgement dated 21st April, 1982 (Ex. W7) in Appeal No. 34/80. Admittedly the Petitioner did not choose to prefer any further appeal against the said conviction. The High Court confirmed the conviction of the accused, but modified the sentence of imprisonment. Therefore, is not open to the petitioner not to contend that the charges alleged against him in the criminal case are not proved. The judgement of the High Court has been final. There is also no substance in the contention of the learned counsel for the petitioner that the petitioner was punished without any proper enquiry and that the departmental enquiry initiated into the charges in respect of the charge sheet dated 20th December, 1976 had been dispensed with without assigning any reason. It has come in the evidence of M.W1 that the departmental enquiry initiated for the charges in respect of the petitioner under Ex. W5 by the Special Judge of S.P.E. & A.C.B. Cases Hyderabad and the confirmation by the High Court under Ex. W7. In view of the conviction of the petitioner by a competent criminal court, there is no need to conduct any further enquiry into the same charges against the petitioner. It is not disputed that as an employee of Life Insurance Corporation, the petitioner is governed by the L.I.C. of India Staff Regulations 1960. Under Regulation 39(4) of the L.I.C. of India Staff Regulations 1960 the disciplinary authority is competent to impose a penalty on an employee on the ground of conduct which had lead to a conviction on a criminal charge without resorting to any regular enquiry. As contained in Sub-Clauses (1) and (2) of Regulations 39. Thus under Regulation 39(4) of the L.I.C. of India Staff Regulations, the Respondent is competent to impose the penalty of the petitioner without conducting any enquiry as the petitioner has been convicted on criminal charges under Sections 420, 467 and 471 of I.P.C. read with Section 5(1)(d) and 5(2) of the Prevention of Corruption Act. Therefore, the punishment has been imposed as per the statutory regulations called the L.I.C. of India Staff Regulations 1960. It does not violate the principles of natural justice as contended by the learned counsel for the Petitioner. Moreover, even before imposing the punishment, a show cause notice dated 20th December, 1982 (Ex. M1) was issued to the Petitioner calling for his explanation why he should not be dismissed from service as he was convicted for grave criminal charges. Ex. W8 is the xerox copy of the reply submitted by the petitioner and as seen from this document, he simply pleaded mercy. Under Ex. W9 the Respondent instead of dismissing the petitioner as proposed under Ex. M1, imposed the punishment of removal from service so as to not to deprive the petitioner the terminal benefits and chance to get employment in other establishments. Thus an opportunity was also given to the petitioner and he explained his conduct before the punishment was imposed on him. Thus I do not find any substance in all these contentions of the learned counsel for the Petitioner.

9. The learned counsel for the Petitioner next contends that the punishment of removal from service of the petitioner is disproportionate with the proved misconduct on the part of the Petitioner. Admittedly, the petitioner was convicted for the offences under Section 420 (cheating, dishonesty inducing delivery of property), Section 467 (forgery of valuable security) and Section 471 (using a genuine forged documents) of I.P.C. and for the offence under Section 5(2) of Prevention of Corruption Act (charge of corruption). All these offences are grave in nature. The charges proved against the petitioner are that while he was working as Higher Grade Assistant in Life Insurance Corporation of India, Divisional Office, Vizag fraudulently encashed the cheque of Rs. 944.80 bearing No. 415074 dated 3rd September, 1976 issued by the Divisional Office drawn on Andhra Bank Limited, Dwarakanagar, Visakhapatnam in favour of Babbadi Kurminaidu towards the loan raised against his Policy No. 37707876 by forging the signature of the said Kurminaidu who is the payee and misappropriated the said amount. It is also proved against the Petitioner that he forged the signatures of Abdul Gafoor Development Officer, L.I.C. Veeraghattam on the loan papers and obtained payment of balance of Policy loan of Rs. 70.00 against the Policy No. 36339635 of the said Abdul Gafoor in cash and misappropriated the same. The punishment imposed on the petitioner is one of removal from service. The persons who are convicted for the offences of this type should not be allowed to continue in public offices and institutions as otherwise the public will lose confidence in the said office, or institutions. The petitioner richly deserves the punishment imposed on him for the offences committed by him. On a careful consideration of the evidence on record, I have no hesitation to conclude that the punishment of removal from service imposed on the petitioner is not disproportionate with the gravity of the misconduct proved against him.

10. In the light of my above discussion, I hold on Point (1) that the action of the Respondent-Management in imposing the penalty of removal from service w.e.f. 19th March, 1983 on the petitioner N. Venkateswar Rao is legal and justified. The point is thus decided in favour of the Respondent-Management and against the Petitioner.

11. POINT (2).—This point relates to the relief to be granted to the Petitioner-workman herein. In view of my finding on Point (1), that the action of the Management is justified in imposing the penalty of removal from service on the petitioner w.e.f. 19th March, 1983, the petitioner-workman is not entitled for any relief under this reference.

12. In the result, Award is passed holding that the action of the Management of Life Insurance Corporation of India in imposing the penalty of removal from service on Sri N. Venkateswar Rao w.e.f. 19th March, 1983 is legal and justified and that the said Petitioner workman is not entitled for any relief under this reference. The parties are directed to bear their costs.

Dictated to the Stenographer, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal, this the 9th day of November, 1995.

A. HANUMANTHU, Presiding Officer

Appendix of Evidence

Witnesses Examined for Petitioner-Workman :

W.W1—Sri N. Venkateswar Rao.

Witnesses Examined for Respondent-Management :

M.W1—A. Purushotham Rao.

Documents marked for the Petitioner-Workmen :

Ex. W1 9-11-1976—Reply to the charge sheet given by W.W1.

Ex. W2 16-11-1976—Office Order issued to Sri N. Venkateswar Rao by the Divisional Manager, L.I.C. Visakhapatnam.

Ex. W3 17-11-1976—Notice of the Enquiry Officer to the Petitioner-Workman regarding the enquiry notice.

Ex. W4 1-12-1976—Letter postponement of enquiry issued by the Enquiry Officer to the Petitioner-Workman.

Ex. W5 23-7-1979—Office Order regarding suspension of the Petitioner from service.

Ex. W6 23-7-1979—Judgement copy of C.C. No. 27/78.

Ex. W7 23-7-1979—Xerox copy of Cr. Appeal No. 34/80.

Ex. W8 3-12-1982—Xerox copy of reply to show cause notice.

Ex. W9 19-3-1983—Dismissal Order (Xerox copy).

Ex. W10 10-12-1983—Appellate Order.

Ex. W11 10-12-1983—Xerox Copy of the order in W.P. No. 5297/88.

Documents marked on behalf of the Respondent :

Ex. M1 20-12-82—Charge Sheet-cum-show cause notice issued to the workmen by the Management.

नई दिल्ली, 16 जनवरी, 1996

का. आ. 340 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में, केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-1-96 को प्राप्त हुआ था।

[संख्या एल-12012/449/90-आई. आर०बी. 2]

ब्रज मोहन, डैस्क अधिकारी

New Delhi, the 16th January, 1996

S.O. 340.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of Bank of India and their workmen, which was received by the Central Government on the 12-1-96.

[No. L-12012/449/90 IR(B)-II)]

BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, PANDU NAGAR, KANPUR

Industrial Dispute No. 73 of 1991

In the matter of dispute

BETWEEN

Vice President,
Bank of India Staff Union,
Through Bank of India,
L.I.C. Building,
The Mall, Kanpur

AND

Regional Manager,
Bank of India,
L.I.C. Building,
M.G. Road,
Agra-282007

1. Central Government, Ministry of Labour, New Delhi vide its notification no. L-12012/449/90-I.R.(B-2) dt. 3-6-91, has referred the following dispute for adjudication to this Tribunal :—

"Whether the claim raised by the bank of India Staff Union Kanpur that Shri Kailash Chandra was an employee of Bank of India, Faizabad Branch is correct and justified ? If so whether Shri Kailash Chandra is entitled for regular appointment in the Bank's services and what benefits he is entitled to?"

2. It is unnecessary to give facts of the case as after the exchange of pleadings the concerned workman stopped coming to Tribunal. Perhaps he is not interested in the case.

3. Hence my answer to the reference is in affirmative for want of proof. Consequently the concerned workman is not entitled for any relief.

4. Reference is answered accordingly.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 16 जनवरी, 1996

का. आ. 341 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में, केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-1-96 को प्राप्त हुआ था।

[संख्या एल-12012/348/90-आई.आर.बी. 2]

ब्रज मोहन, डैस्क अधिकारी

ew Delhi, the 16th January, 1996

S.O. 341.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of Bank of India and their workmen, which was received by the Central Government on the 12-1-96.

[No. L-12012/348/90 IR(B.II)]

BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, PANDU AAGRA, KANPUR

Industrial Dispute No. 13 of 1991

In the matter of dispute

BETWEEN

D. P. Singh,
Regional Secretary,
Bank of India Worker's Organisation,
K-42/72, Bulanala, Varanasi.

AND

Regional Manager,
Bank of India,
Nawal Kishore Road,
Lucknow.

AWARD

1. Central Government, Ministry of Labour, vide its notification no. L-12012/342/90-I R. (B.II) dt. nil has referred the following dispute for adjudication to this tribunal :—

"Whether the action of the management of bank of India in imposing the penalties of warning, stoppage of

one increment on one charge and stoppage of one increment on another charge on Sri Chandra Dea Pathak is justified ? If not, what relief the workman is entitled ?"

2. It is unnecessary to give full facts of the case as the authorised representative for the Union on 2-1-96, ha moved an application to the effect that the concerned workman is not interested in the case and as such he does not want to prosecute with the case any more. The case as such be decided.

3. In view of above, it is clear that the concerned workman is not interested in the case and the reference is answered in affirmative for want of proof. Consequently the concerned workman is not entitled for any relief.

4. Reference is answered accordingly.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 16 जनवरी, 1996

का. आ. 342 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केनारा बैंक के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में, केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-1-96 को प्राप्त हुआ था।

[संख्या एल-12012/47/88-डी-2-ए/आई.आर.बी. 2]
ब्रज मोहन, डैस्क अधिकारी

New Delhi, the 16th January, 1996

S.O. 342.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of Canara Bank and their workmen, which was received by the Central Government on the 12-1-96.

[No. L-12012/47/88-DIIA/IR(B-I)]
BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTIAL TRIBUNAL CUM LABOUR COURT PANDU NAGAR, KANPNR

Industrial Dispute No. 179 of 1988

In the matter of dispute

BETWEEN

Karan Singh
Ex-clerk
(185—88) B-760
Lajpat Nagar
Moradabad.

AND

The Chairman
Central Bank
H.O. 112 J. C. Road
Bangalore

AWARD

1. Central Government, Ministry of Labour, vide its notification no. L-12012/47/88-D.II(A) dt. 9-12-88, has referred the following dispute for adjudication to this Tribunal :—

"Whether the action of the management of Canara Bank in dismissing Sri Karan Singh from the services of the bank is justified ? If not, to what relief the workman entitled ?"

2. The opposite party Canara Bank has also get its branch at Moradabad. In the year 1981, the concerned workman, alongwith K. C. Holla, Dhan Shekharan, Narain Singh, Mohiuddin and others were posted in this branch. One Sardar Hussain was a customer ot this branch having his saving banks account no. 1634. At this branch a cheque book in the name of Sardar Hussain was taken and subsequetly on 22-6-1981 by means of cheque no. 945932 a sum of Rs. 6800 was drawn from the bank in the name of this account holder. Subsequently this account holder complained to branch manager that he had neither sent any requisition slip for issuance of cheque book nor he had issued the above mentioned cheque for Rs. 6800 and withdrawn the money. On the basis of this report a preliminary investigation was made by P Arvind Rao and on the basis of this investigation the complicity of the concerned workman was noticed. Consequently he was served with the chargesheet dt. 18-5-82 for committing forgery in requisition of cheque book and fraudulent withdrawal of Rs. 6800 on the basis of forged cheque. One C. Badri was appointed enquiry officer. He submitted his report on 26-11-1984 holding the concerned workman guilty of all the charges. On the basis of this report dismissal order on 31-7-86 was passed. Appeal was dismissed on 18-4-87. The representation to higher authorities also met the same fate, on 6-7-87.

3. Feeling aggrieved the concerned workman raised the instant industrial dispute.

4. In his written statement the concerned workman has challenged the proprietory and fairness of domestic enquiry. He has further alleged that he was no a party to any such fraud regarding issuing of requisition taking of cheque book and withdrawal of Rs. 6800 by issuance of forged cheque.

5. On the other hand, the management bank had maintained that enquiry was fairly and properly held and that it was the concerned workman who was involved in this fraud.

6. On the basis of pleading a preliminary issue was struck by my learned predecessor. Both the parties adduced evidence. By order dt. 25-10-1991 my learned predecesor held that enquiry was not fairly and properly conducted. Being further of the view that no fruitful purpose would be served by giving fresh opportunity to the management to prove the misconduct. Final award was given in favour of the concerned workman which was published in due course. The management also filed writ petition no. 2697 of 1992. This writ petition was ultimately allowed on 1-11-94 and the reference was remanded as Hon'ble High Court was of the view that the management ought to have been given a cheque to prove the misconduct before this Tribunal.

7. After remand of the case the management once again examined Hand Writing Expert Ashok Kashyap and one P Arvind Rao. In rebuttal concerned workman has examined himself. Further he had filed the report of hand writing expert. As he has failed to bring the witness before the Tribunal in time this report could not be proved.

8. As has been noticed earlier there are two charges against the concerned workman. The first is regarding fraudulent obtaining of cheque book by issuing forged requisition request on behalf of Sardar Hussain. The second is regarding issuance of fraudulent cheque no. 945932 dt. 22-6-81 by forging the signature of Sardar Hussain. The management has tried to implicate the concerned workman by alleging that requisition request was in the hand of concerned workman and that cheque in question was also in the writing of concerned workman. Token number on the cheque has also noted been by the concerned workman. Further proving these facts before the enquiry officer, the concerned employees of the bank were examined They were Jagpal Singh, Mohiudd'n, K C. Holla They had stated before the enquiry officer that requisition slip and cheque was in the hand writing of the concerned workman and token number was also written by the concerned workman on the cheque. Hand writing expert had also opined like wise. It is well settled law that evidence which is adduced before the enquiry officer is to be ignored when enquiry report is set aside and the employer is given opportunity to prove the misconduct

on merits before Labour Court/Industrial Tribunal. Strangely enough none of these persons were examined. Management version further is that cheque was issued to Jagpal Singh who was ledger keeper. After verification he had sent the cheque to Mohiuddin Accountant. He had passed the cheque after verifying the signatures. Thereafter, payment was made by the cashier when token was tendered to him. In my opinion, these three persons ought to have been examined before this Tribunal as well to prove that they had seen the concerned workman at any time which would have a circumstance against the concerned workman. In any case as they were fully conversant with the hand writing of the concerned workman their opinion would have also been relevant. I am further of the view that the account holder Sardar Hussain should have also been examined to prove that disputed cheque was not written by him and that he had not withdrawn Rs. 6800. He could have also proved that actually he had not sent the requisition slip. In my opinion, in the absence of his evidence it has not been even proved that there has been forgery and fraud in obtaining cheque book and fraudulent issuance of cheque for Rs. 6800. When the case of fraud and forgery is not established in the normal course there would not have been any necessity to find out as to who would have been the person who would have practiced the fraud and forgery. In any case as observed earlier the evidence of above mentioned persons was very material to prove forgery and fraud, specially when the concerned workman on oath had denied before this Tribunal that he was not a party to any of these alleged fraud and forgery. As regards the evidence of hand writing expert Ashok Kashyap in my opinion, it is a waste paper. There can be no manner of doubt that evidence of hand writing expert is relevant under sec. 45 of Evidence Act. However, it is not substantive piece of evidence. Instead it has got corroborative nature. It is also equally well settled law that for making the report of hand writing expert relevant it is necessary that comparison of disputed writing/signatures should be made with the help of admitted of specimen signatures. In the instant case no effort was made for obtaining specimen signature. There were also no admitted signatures of the concerned workman or Sardar Hussain. Instead the management handed over socalled admitted signatures of Sardar Hussain and the concerned workman to the hand writing expert for comparison. Since they were not admitted by the concerned workman, the same could not be treated as admitted or specimen signature. This fact has been admitted by Ashok Kashyap M.W.1. Thus the hard fact remains that the report Ex. M-11 and and M-12 of the hand writing expert is not the result of comparison between admitted/specimen signatures and disputed signature. In this way the very foundation for making hand writing report relevant stands demolished. As such it is to be ignored. As regards the evidence of P. Arvind Rao it does not prove the case of the management in any manner. He had simply investigated the case and had given a primafacie finding agents the concerned workman. An officer who makes preliminary enquiry in any manner is not expected to prove anything regarding merits of the case when enquiry is finally conducted.

9. Thus from the above scrutiny, it is evident that the case against the concerned workman is based virtually on no evidence. In this way the management has failed to prove the two misconducts in this Tribunal. The punishment is based on the alleged two misconducts have not been proved the punishment by way of dismissal is also not justified.

10. As such my award is that the action of the management of Canara Bank in dismissing the concerned workman from services of the bank is not justified. He is also entitled for back wage at the rate at which he had lastly drawn his wages.

11 Reference is answered accordingly.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 16 जनवरी, 1996

का. आ. 343.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केनारा बैंक के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-1-96 को प्राप्त हुआ था।

[संख्या एल—12012/92/94—आई. आर. बी. 2]

ब्रज मोहन, डैस्क अधिकारी

New Delhi, the 16th January, 1996

S.O. 343.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Hyderabad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Canara Bank and their workmen, which was received by the Central Government on the 12-1-96.

[No. L-12012/92/94-IR(B-II)]

BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT HYDERABAD

PRESENT :

Sri A. Hanumanthu, M.A., LL.B., Industrial Tribunal-I

Dated 22nd day of November, 1995

Industrial Dispute No. 49 of 1994

BETWEEN

Sri P. Bujji, Ex-Sweeper,
S/o. Sri Satyanarayana,
H. No. 35-5-1, Giripuram, Vijayawada .. Petitioner.

AND

The Deputy General Manager,
Canara Bank, Circle Office, Ruby House,
Himayatnagar, Hyderabad-29. .. Respondent.

APPEARANCES :

Sri. K. Venkateswarlu, Advocate—for the Petitioner

S/Sri A. Gopal Reddy & Harender Pershad, Advocates—for the Respondent.

AWARD

The Government of India, Ministry of Labour by its Order No. L-12012/92/94-IR(B.II) dt. 16-8-1994 made under Section 10(1)(d) & (2A) of the Industrial Disputes Act, 1947 for adjudication of the dispute annexed in the schedule therein which reads as follows :—

"Whether the action of the management of Canara Bank, Hyedarabd in removing the name of Shri P. Bujji Sweeper from the panel of daily wage earners w.e.f. Feb. 1992, is justified ? If not, what relief the said workman is entitled to ?".

This reference has been registered as Industrial Dispute No. 49 of 1994 on the file of this Tribunal.

2. The Petitioner workman filed his claim statement on 7-9-1994 while the Respondent Management filed its counter on 14-2-1995. The matter was posted for enquiry on 3-4-1995. Since 3-4-1995 the matter has been adjourned

from time to time till 13-11-1995. On 13-11-1995 the petitioner was not ready. Again adjourned to 22-11-1995 and the petitioner was ordered to pay cost of Rs. 25.00 to Respondent. On 22-11-1995 costs not paid. The Petitioner and his counsel were absent. Respondent and his counsel also called absent. No representation on both sides.

3. In view of the above circumstances and as both sides were not evincing any interest in the matter the reference has been closed for default.

Typed to my dictation, given under my hand and the seal of this Tribunal, this the 22nd day of November, 1995.

A. HANUMANTHU, Presiding Officer

नई दिल्ली, 16 जनवरी, 1996

का. आ. 344.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूनियन बैंक आफ इंडिया के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में, केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-1-96 को प्राप्त हुआ था।

[संख्या एल-12012/80/89/डी II ए—आई. आर. (बी 2)]

ब्रज मोहन, डैस्क अधिकारी

New Delhi, the 16th January, 1996

S.O. 344.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of Union Bank of India and their workman, which was received by the Central Government on the 12-1-96.

[No. L-12012/80-89-D.II A/IR (B-II)]

BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT PANDU NAGAR KANPUR

Industrial Dispute No. 210 of 1989

In the matter of Dispute.

BETWEEN

State Assistant General Secretary,
U. P. Bank Employees Union,
36/1 Kailash Mandir Kanpur.

AND

Regional Manager,
Union Bank of India,
Regional Office Pandu Nagar,
Kanpur.

AWARD

1. Central Government, Ministry of Labour, New Delhi, vide its notification No. L-12012/80/89-D-2(A) dt. 29th Aug. 1989, has referred the following dispute for adjudication to this Tribunal :—

Whether the action of the management of Union Bank of India in not making payment of uniform allowance of 180 for every block of two years for the period from 1-10-79 to 1986 to Smt. Jadi, part time sweeper is justified ? If not, to what relief is the workman entitled ?

2. It is unnecessary to give full facts of the case as after exchange of papers neither the concerned workman nor the union turned up in the case despite issue of notice. It thus appears that neither the Union nor the concerned workman is interested in the case.

3. In view of above, reference is answered in affirmative for want of proof. Consequently concerned workman is not entitled for any relief.

4. Reference is answered accordingly.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 16 जनवरी, 1996

का. आ. 345.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल बैंक आफ इंडिया के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में, केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-1-96 को प्राप्त हुआ था।

[सं. एल-12012/199/94/आई आर.(बी.-2)]

ब्रज मोहन, डैस्क अधिकारी

New Delhi, the 16th January, 1996

S.O. 345.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of Central Bank of India and their workmen, which was received by the Central Government on the 12-1-96.

[No. L-12012/199/94-IR(B-II)]

BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, PANDU NAGAR, KANPUR

Industrial Dispute No. 91 of 1994

In the matter of dispute

BETWEEN

Sri I. M. Mishra,
General Secretary,
Central Bank Employees Congress (U.P.),
through Central Bank of India,
Navaganj,
Kanpur.

AND

Regional Manager,
Central Bank of India,
Regional Office,
Pandu Nagar,
Kanpur.

AWARD

1. Central Government Ministry of Labour, New Delhi vide its notification No. L-12012/199/94 I.R.B-2 dt. 8-11-94, has referred the following dispute for adjudication to this Tribunal—

"Whether the action of the management of Central Bank [illegible] the [illegible] of [illegible] to the [illegible] stage for a period of [illegible] Sri I. M. Mishra, Special Assistant

w.e.f. 29-7-93 is justified ? If not, what relief is the said workman entitled to ?"

2. It is unnecessary to give facts of the case as after the exchange of pleadings the concerned workman stopped coming to Tribunal perhaps he is not interested in the case.

3. Hence my answer to the reference is in affirmative for want of proof. Consequently the concerned workman is not entitled for any relief.

4. Reference is answered accordingly.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 16 जनवरी, 1996

का.आ. 346.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनाइटिड बैंक आफ इंडिया के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में, केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-1-96 को प्राप्त हुआ था।

[संख्या एल-12012/212/88/डी II ए/आई आर बी-2)]

ब्रजमोहन डैस्क अधिकारी

New Delhi, the 16th January, 1996

S.O. 346.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of United Bank of India and their workmen, which was received by the Central Government on the 12-1-96.

[No. L-12012/212/88 D.II.A/IR(B-II)]

BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, PANDU NAGAR, KANPUR

Industrial Dispute No. 144 of 1988
In the matter of dispute

BETWEEN

Sri Parsuram,
C/o V. N. Sekhari,
26/104, Birhana Road,
Kanpur.

AND

Regional Manager,
United Bank of India,
Regional Office,
4-B-Habibulla Estate,
Hazaratganj,
Lucknow.

AWARD

1. Central Government, Ministry of Labour, vide its notification no. L-12012/212/88-D.2(A) dated 3-11-88, has referred the following dispute for adjudication to this Tribunal—

"Whether the action of the management of United Bank of India in terminating the services of Shri Parsu Ram and not considering him for further employment while recruiting fresh hands under section 25H of the I.D. Act is justified, if not, to what relief in the workmen entitled ?"

2. The concerned workman in his claim statement interalia has alleged that according to Bipartite Settlement preceded by Shastry Award and Desai Award, there are four categories of Award Staff viz., Permanent Employee, Probationer, Temporary Employee and Part Time employee. The bank authorities have no right to make any appointment in the categories otherwise than there mentioned above. Yet in breach of above provisions, the concerned workman was appointed on 1-5-81 as peon-cum-waterman-Canteen Boy. He continued on this post upto 31-6-86. Thereafter, his services were terminated. He was daily wage earner and no wages were paid to him on for Sundays and other holidays. As he was doing job of permanent nature his services cannot be determined without compliance of section 25F and 25G of Industrial Disputes Act, 1947. As it has been done in breach of above provisions the termination is bad in law.

3. Earlier exparte award was given on 15-12-89, the same was set aside and opposite party was afforded opportunity to file reply.

4. The opposite party has filed written statement in which it is denied that the concerned workman was doing the job of permanent nature. Instead he was engaged for supply of water during summer season for fixed period. There are rules and regulations for recruitment for peon. If the concerned workman is allowed to work it will amount to back door entry.

5. The concerned workman has filed rejoinder in which the above mentioned fact has been denied.

6. The first point which needs consideration is as to whether the concerned workman was an employee of the management bank.

7. The concerned workman has also filed his affidavit and documents whereas the opposite party has not adduced any evidence, inspite of opportunity having been given to them.

8. Ext. W-1 is the certificate dt. 5-8-85 in which it has been certified by the opposite party that the concerned workman had worked during the summer months from 15th April to 15th July as a Canteen Boy in the Canteen. His wages were Rs. 14/- per day. The same is nature of Ext. W-2 another certificate dt. 17-10-84, which shows that the concerned workman had worked as canteen boy w.e.f. August, 1982. Ext. W-4 is the savings bank account of the concerned workman which is not relevant. Apart from this the concerned workman in his evidence has stated that he had worked from 1-5-81 to 30-6-86 without break as Waterman-cum-Peon-cum-Farrash. In his cross-examination he has admitted that his attendance was not recorded in attendance register. He was not given wages as sub-staff are given. He was not granted leave, like regular sub-staff. He was not given any appointment letter. In the end he has conceaded there is a Staff Canteen in the management and he used to do work for filling water in coolers. This admission coupled with the averments made in Ext. W-1 and W-2, it is fully proved that the concerned workman was not the employee of the management bank opposite party. Instead he was working in the canteen. There is no evidence worth the name that this canteen has any nexus with the bank management. It is held accordingly.

9. As the concerned workman has not been held to be the employee of the opposite party bank, question of breach of section 25F and other provisions of Industrial Disputes Act, 1947, does not arise.

10. In the end my finding is that as the concerned workman is not the employee of opposite party, question of termination of services of the concerned workmaa by the bank management does not arise. Similarly question of giving any fresh change as envisaged by section 25H of Industrial Disputes Act, 1947, does not arise. As such the concerned workman is not entitled for any relief.

11. Reference is answered accordingly.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 16 जनवरी, 1996

का.आ. 347.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक आफ इंडिया के प्रबंधतंत्र नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में, केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-1-96 को प्राप्त हुआ था

[संख्या एल-12012/252/92-आई आर बी 2]

ब्रजमोहन, डैस्क अधिकारी

New Delhi, the 16th January, 1996

S.O. 347.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of Union Bank of India and their workmen, which was received by the Central Government on the 12-1-96.

[No. L-12012/252/92-IR(B-II)]

BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT PANDU NAGAR, KANPUR

Industrial Dispute No. 145 of 1992

In the matter of dispute

BETWEEN

R. P. Sonkar,
President, U.P. Bank Employees Union,
120/454, Lajpat Nagar, Kanpur.

AND

Regional Manager,
Union Bank of India,
Pandu Nagar, Kanpur.

AWARD

1. Central Government, Ministry of Labour, New Delhi, vide its notification no. L-12012/252/92/I.R. B-2 dt. 8-12-1992, has referred the following dispute for adjudication to this Tribunal—

"Whether the claim of Union Bank Employees Union Kanpur, that Sri Anand, Part-time Sweeper is entitled to 3/4 scale wages from 9-12-77 and to full scale wages from 1-9-84, is justified ? If not to what relief the workman is entitled to ?"

2. It is unnecessary to give full facts of the case as the concerned workman failed to put his appearance before this Tribunal for his evidence despite issue of notice. Thus it is clear from his conduct that he is not interested in the case.

3. In view of it, reference is answered in the affirmative for want of proof. Consequently it is held that the concerned workman is not entitled for any relief.

4. Reference is answered accordingly.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 16 जनवरी, 1996

का.आ. 348.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेंट्रल बैंक आफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-1-96 को प्राप्त हुआ था।

[संख्या एल-12012/30/94-आई आर बी-2]

ब्रजमोहन, डैस्क अधिकारी

New Delhi, the 16th January, 1996

S.O. 348. In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of Central Bank of India and their workmen, which was received by the Central Government on the 12-1-96.

[No. L-12012/30/94 IR(B-II)]

BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, PANDU NAGAR, KANPUR

Industrial Dispute No. 39 of 1994

In the matter of dispute

BETWEEN

Sri J. M. Mishra,
Div. Secretary,
Central Bank Employees Congress (U.P.),
through Central Bank of India,
Nayaganj,
Kanpur.

AND

Regional Manager,
Central Bank of India,
Regional Office,
Pandu Nagar,
Kanpur.

AWARD

1. Central Government, Ministry of Labour, New Delhi vide its notification no. L-12012/30/94-I.R. (B-2) dt. 13-4-94, has referred the following dispute for adjudication to this Tribunal—

"Whether the action of the management of Central Bank of India, Kanpur in imposing the punishment of stoppage of one increment with cumulative effect on Sri A. K. Nigam Clerk vide their order dated 2-9-1991 is justified ? If not, what relief is the said workman entitled to ?"

2. It is unnecessary to give facts of the case as after the exchange of pleadings the concerned workman stopped coming to Tribunal. Perhaps he is not interested in the case.

3. Hence my answers to the reference is in affirmative for want of proof. Consequently the concerned workman is not entitled for any relief.

4. Reference is answered accordingly.

B. K. SRIVASTAVA, Presiding Officer

विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-1-96 को प्राप्त हुआ था।

[सं. एल-12011/70/89-आई आर(बी-1)]
पी. जे. माइकल, डैस्क अधिकारी

New Delhi, the 16th January, 1996

S.O. 319. In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of National Bank for Agriculture and Rural Development and their workmen, which was received by the Central Government on the 12-1-96.

[No. L-12011/70/89-IR(B-I)]
P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, PANDU NAGAR, KANPUR

Industrial Dispute No. 61 of 1990

In the matter of dispute

BETWEEN

Shyam Sunder Awasthi,
C/o D. R. Saxena,
189, New Model House,
Lucknow.

AND

U.P. Prabandhak,
Rashtriya Krishi Aur Gramin Vikas Bank,
11, M. G. Road,
Lucknow.

AWARD

1. Central Government, Ministry of Labour, New Delhi, vide its notification no. L-12011/70/89 I.R. (Bank-I) has referred the following dispute for adjudication to Tribunal—

"Whether the Dy. General Manager, National Bank for Agriculture & Rural Development, Lucknow, is justified in terminating the services of Sri Shyam Sunder Awasthi w.e.f. 31-3-84 in violation of section 25F, G and H of the Industrial Disputes Act, 1947 ? If not, what relief the workman is entitled to?"

2. In his claim statement the concerned workman Shyam Sunder Awasthi has alleged that he was simply a workman in the opposite party NABARD on 9-5-80. He worked there upto 31-3-84 continuously. Thereafter his services were terminated and new hands were employed. No notice pay and retrenchment compensation was given. Hence there has been breach of section 25F and H of Industrial Disputes Act. As such termination is bad in law.

3. Opposite party has filed reply in which it has been alleged that the concerned workman was employed by the erstwhile ARDC on daily wages on ad-hoc basis. There he worked upto 31-3-84 intermittently. Thereafter he stopped reporting duty in that bank. In this way in the previous bank he had worked for only 198 days. Subsequently the above mentioned ARDC was merged and the opposite party NABARD came into existence on 12-1-82. There the concerned workman was taken on daily wages from 15-1-83. After 31-3-84, the concerned workman himself stopped coming. During this period he had worked for only 162 days. In other words he had not work of for 240 days. As such question of compliance of section 25F I.D. Act, does not arise. It is also denied that after the termination of the concerned workman no new hands were appointed.

4. In his rejoinder, the concerned workman had denied that he had over abandoned the services.

5. In support of his case, the concerned workman has filed his affidavit on 29-12-90. He was also cross-examined. In rebuttal Development Officer S. K. Banerjee filed his affidavit on 24-6-91. He too was cross-examined. Further evidence of R. A. Mishra was also given but as his evidence is not based on his personal knowledge it is being not considered. Besides both the parties have also filed papers.

6. The first point which needs consideration is as to whether for how many days and at where the concerned workman had actually worked. The concerned workman in his cross-examination has conceded that he had worked with opposite party NABARD during the year 1983-1984. Before that he had not worked in this bank and had worked in the other bank as alleged by the management. Thus from this admission it is established that the concerned workman had also worked in ARDC and subsequently had worked in the year 1983-84 with opposite party on ad-hoc basis as daily wager. As such the services rendered in ARDC cannot be counted as against the opposite party NABARD. S. K. Banerjee with the attendance register and wage register has proved that the concerned workman has worked for only 168 days during this period.

7. In his cross-examination, the concerned workman too has admitted that in the opposite party he has not continuously worked. Some times he had worked for 10 days in a month and some times for 15 days in a month. He also does not remember that as to on what basis he had not worked with the opposite party. Thus in my opinion, the evidence of the concerned workman on this point is evasive whereas the evidence of management is positive. As 162 days and that too intermittently.

8. Next it will be seen as to whether or not the concerned workman had abandoned the services on 31-3-84. There is the evidence of S. K. Banerjee Development Officer on this point which has been rebutted by the concerned workman. In these days of accute unemployment it is unlikely that the concerned workman would have voluntarily stayed away from work. In view of there circumstances, I believe the version of the concerned workman and hold that the concerned workman had not stopped coming to duty. He was prevented from doing so which amounts cessation of service.

9. The case of the concerned workman is based on violation of section 25F and 25H of Industrial Disputes Act. In view of my opinion, when the concerned workman had not completed 240 days in a calendar year there can be no manner of doubt that there had not been breach of section 25F of Industrial Disputes Act by non-payment of notice pay and retrenchment compensation.

10. It need not be examined if new hands were employed in place of concerned workman as it cannot be found a basis for invalidating the order of termination. Instead this act would constitute a distinct cause of action for seeking employment. Of course there is no mention of this aspect In reference this tribunal cannot travel beyond reference. Hence, this matter is left undecided. If he is so advised the concerned workman may agitate the matter by seeking a fresh reference.

11. No other point has been raised.

12. In the end as both the grounds on which termination has been sought to be challenged fails, my answer to reference is in the negative and against the workman. As such the concerned workman is not entitled for any relief.

13. Reference is answered accordingly.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 16 जनवरी, 1996

का. आ. 350.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस. सी. सी. लि. के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण हैदराबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-1-96 को प्राप्त हुआ था।

[सं. एल-22012/295/93-आई आर (सी-II)]
राजा लाल, डैस्क अधिकारी

New Delhi, the 16th January, 1996

S.O. 350.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Hyderabad as shown in the Annexure in the industrial dispute between the employers in relation to the management of S.C.C. Ltd. and their workmen, which was received by the Central Government on the 12-1-1996.

[No. L-22012|295|93-IR C-II]
RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT HYDERABAD

PRESENT :

Sri A. Hanumanthu, M.A., LL.B.,
Industrial Tribunal-I.

Dated : 14th day of November, 1995.

INDUSTRIAL DISPUTE NO. 11 OF 1994.

BETWEEN :

Workmen of Singareni Collieries Company Limited, Yellandu. .. Petitioner

AND

The Management of Singareni Collieries Company Limited, Yellandu ... Respondent

APPEARANCES :

Sri B. Ganga Ram, Representative for the Petitioner—Workmen.

M|s. K. Srinivasa Murthy & G. Sudha, Advocate for the Respondent– Company.

AWARD

The Government of India, Ministry of Labour by its Order No. L-22012|295|93-IR(C.II), dt. 21-1-1994 referred the following dispute under Section 10(1)(d) (2A) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) for adjudication of the dispute annexed in the schedule which reads as follows :—

"Whether the action of the management of M|s S.C.C. Ltd., Yellandu Division in not granting annual increment to Sri D. Chandrasekhar Rao and five others w.e.f. 1-3-1989 is justified ? If not, to what relief they are entitled to?".

This reference has been registered as Industrial Dispute No. 11 of 1994 on the file of this Tribunal.

2. On behalf of the Petitioner, a claim statement has been filed to the following effect. Sri D. Chandrasekhar Rao, S. Veerachary, Rayala Venkateswarlu, Md. Shreef, J. Balaram and Sk. Masthan were appointed in the Respondent-Company during 1982 to 1986. While all of them were working as General Mazdoors in Jawahar Khani Open Cast Mine, the Respondent-Company had introduced a Training Scheme for filed candidates. As the above said six employees fulfilled all the conditions of the Company, they were selected and sent for training as Drill Operators Trainees to Manuguru where the Technical Training Centre is situated by the letter dated 4-2-1988. The training period was for six months. During that training period, the employees were paid the same wages which they were receiving earlier including all the fringe benefits The Training Manager relieved them on 21-9-1988 by his proceedings dated 7-9-1988. If the Manager, Technical Training Centre, Manuguru had relieved them so as to enable them to report for duty on 1-1-1988 they would have got their annual increment from 1-3-1989 as per the rules of the Company i.e. six months service should have completed prior to 1-3-1988. As the Manager failed to relieve them to report for duty to get increment on 1-3-1989, the Petitioners represented the case with the Management to grant the increment to them w.e.f. 1-3-1989 as it was not a mistake on the part of the workmen. But the management refused to grant the increment. Thereafter an industrial dispute was raised before the Assistant Labour Commissioner (Central). Some outside candidates were also sponsored for Dumper Operator training along with the above six Driller Operators. After completion of six months training, they were placed in Excavation Category-D and posted to J.K. Open Cast Mine by the office order dated 20-9-1988 The Dumper Operators also reported for duty. On 21-9-1988 the Manager, Technical Training Centre, Manuguru relieved them. Though the Dumper Operators joined the duty on 21-9-1988 they were granted annual increments from 1-3-1989 by the management by modifying its previous office order dated 7-3-1992 to enable them to get the increment from 1-3-1989. Whereas the above said six Drilling Operators were not granted increment on line with those Dumper Operators. The Dumper Operators were granted

increment after lapse of five years by modifying the order dated 7-3-1992. The management is refusing to give such facility to Drill Operators who are regular employees of the Company. On account of this, Drill Operators are losing their increments since 1-3-1989 when compared with the Dumper Operators who undergone training for Drill Operators for the same period and given joining report on the same day on which the drill operators joined. The Conciliation proceedings ended in failure. The Government of India, Ministry of Labour referred this dispute to this Tribunal. The Petitioner prays to pass an Award granting increment in respect of six Drill Operators w.e.f. 1-3-1989 on line with the Dumper Optrators.

3. On ehalf of the Respondent-Management a counter has been filed to the following effect. It is true that Chandrasekhar Rao and five others were appointed in the Respondent-Company during the period 1981 to 1984. Md. Shareef was appointed in the year 1974 as Badli worker. It is also true that the above said six employees were selected for undergoing training on blast-whole drills on Category I wages and they were directed to Techanical Training Centre, Manuguru to undergo training for a period of six months with condition that during the training they will be paid same wages|salaries that they were drawing in the original Category|Grade. The allegation that all the fringe benefits were given to them during the training period is incorrect, and on successful completion of six months training and subject to availability of vacancies they may be appointed as Drill Operator trainees on Category IV wages and posted to in any of the Projects in the Company for further training. Further they will be considered for appointment as Drill Operator in Grade-D|Gr. III on completion of three years service after absorption into Category IV in Open Cast Project. Accordingly, the above said six workers underwent training for a period of six months w.e.f. 8-2-1988 and completed six months training on Category I wages by 7-8-1988. Their cases were reviewed as per the office order dated 4-2-1988 and they were appointed as Drill Operator trainees on Category IV wages by the office order dated 1-9-1988. As per the terms of the said office order, they were appointed as Drill Operator Trainees on a basic pay of Category IV w.e.f. the date they report for duty. They reported for duty on 27-9-1988 and Shaik Mostan on 24-9-1988. During the job training of Drill Operator Trainees for three years, they were paid Cat. IV wages. They will be posted as Drill Operator after completion of the job training and Passing the Departmental Tests. During the job training the Drill Operator trainees are mixed with experienced permanent Drill Operators to learn on the job training. An employees without working cannot claim for increment. Normally according to Administrative procedure, letters will be prepared in advance but the date of receipt is the date of effecting. Simply because the letter is dated 1-9-1988 one cannot assume to calculate increment without receiving the order. The Manager of Technical Training Centre, Manuguru received the order after 1-8-1988 and the same has been served on the workmen immediately. As per the rule position of the Respondent-Company is Annual increment will be given after completion of one year service from the date of they joined as Drill Operator trainees in Cateogry IV. After completion of one year, he gets an increment. Therefore, neither T.T.C. Manager failed in his duties nor workmen commited any mistake. The Drill Operators Category I first undergoes training and then they were drafted as Drill Operators Trainees Category IV, whereas the Dumper Operator Trainees in Cat. V came to Excavation Category-D, i.e. regular scales. So they cannot be compared with the Drill Operators. It is true that based on test and interview, 27 candidaes were selected as E. P. Operator Trainees and were placed in Excavation Cat. D|Grade III as Dumper Operators on successful completion of training and passing in Departmental Test vide office Order dated 30-8-1988. It is also true that on relief they reported before the General Manager, Manuguru and General Manager, G.D.K. and Yellandu around 21st|22nd September, 1988. It is also true that these Dumper Operators were issued with modified office order dated 7-3-1992 as detained below :

"In partial modification office order No. P(PM)-4|4293|2708, dated 30-8-1988, the date of appointment of the following 19 Dumper Operators Excavation Cat. D may be treated as 1-9-1989 instead of from the date they report for duty, to enable them to draw their annual increment on 1-3-1990." The case of Drill Operator trainees is not comparable with that of Dumper Operator as their terms of employment were different. D. Chandrasekhar and five others were appointed as Drill Operators trainees for a period of 3-1|2 years under the Company training scheme whereas the Dumper Operators were appointed as Dumper Operators trainees for a period of six months. After completion of training they were appointed as regular Excavation Grade D. The date of appointment as Drill Operator trainees in Category IV cannot be advanced from 21-9-1988 to 1-9-1988 as they were only trainees. Further they are eligible for increment on completion of one year in Category IV as per letter dated 3-7-1989 on par with tradesmen Cat. IV. As such, they are not eligible for increment from 1-3-1989 and are eligible to draw increment only from 1-3-1990. The Petitioners cannot compare their case with Dumper Operators as they are not equally placed. The Petitioners misconstrued the rule position and raised the dispute. The allegation that the Management acted in a biased manner is incorrect. The refe-

rence as made is bad in law and not maintainable Hence the petitioners are not entitled for any relief.

4. On behalf of the Petitioners-workmen W.W1 is examined and Exs. W1 to W12 were marked. On behalf of the Respondent Company M.W1 and M.W2 are examined and Exs. M1 to M14 are marked. The workman R. Venkateswarlu is examined as W.W1 and he deposed to the averments in the claim statement. Sri Paul Charles, Deputy Personnel Manager and Sri G. Ilya, Personnel Manager working in the Respondent Company are examined as M.W1 and M.W2 respectively and they deposed to the averments to the counter. The details of the documents Exs. W1 to W12 and Exs. M1 to M14 are appended to this Award.

5. The points that arise for consideration in this reference are as follows :—

(1) Whether the Management of the Respondent Company is justified in not granting annual increments to D. Chandrasekhar and five others the workmen under this reference w.e.f. 1-3-1989 ?

(2) To what relief the said workmen under this reference are entitled to ?

6. POINT :(1).—The admitted facts as revealed from the evidence on record are as follows :— There are six workmen concerned in this reference. The workman D. Chandrasekhar Rao was originally appointed as Badli Coal Filler on 3-9-1981. S. Veera Chari was appointed as Badli worker on 13-5-1982. R. Venkateswarlu (W. W1) was appointed as Badli Coal Filler on 3-7-1982 Md. Shareef was appointed as Badli worker on 27-1-1974. J. Balram was appointed as temporary General Mazdoor on 20-4-1983 and Shaik Masthan was appointed as General Mazdoor on 1-4-1984. All the above six workers were selected for undergoing training on Blast hole Drills on Category I basis on certain conditions. As seen from Ex. M7, they were selected for training after granting exemption from educational qualifications. Ex. W1 is the office order dated 4-2-1988 selecting these six general mazdoors to undergo training for a period of six months at Technical Training Centre, Manuguru subject to the conditions mentioned therein. Exs. M1 and M10 are the copies of Ex. W1. The conditions that are incorporated in Ex. W1 are that during the six months training period, they will be paid Category I wages which they were drawing and on completion of six months training and subject to availability of vacancies they will be appointed as Drill Operator Trainees in Category IV and they may be posted in any of the Open Cast Projects in the Company for further training for 3 years. On completion of Drill Operator training, they will be considered for appointment as Drill Operator in Group 'D'|Grade-III in Open Cast Project. They accepted to undergo training as per the terms of the office order dt. 4-2-1988 (Ex. W1) During the training period, they were also paid Category I wages. After completion of training for six months at Technical Training Centre, Manuguru, they were given appointment as Drill Operator Trainees Category IV under Office Order dt. 1-9-1988 (Exs. W2 and M2) with effect from the date they report for duty. In this order Ex. W2, it is specifically mentioned that they will be considered for appointment as Drill Operator in Excavation Group 'D'|Grade III on completion of three years satisfactory training in Category IV. As seen from Ex. W3 the proceedings of the Manager, Technical Training Centre, Manuguru, the six employees were relieved after duty hours on 21-9-1988. As seen from Ex. M4 these six employees submitted their joining reports before the General Manaer, Personnel, Yellandu as Drill Operator Trainees on 22-9-1988. The six workmen have to be appointed as Dril Operators after their successful completion of training as Drill Operator Trainees for three years.

7. It is also admited that there is a settlement under Section 12(3) of the I.D. Act dt. 14-7-1990 between the Management and the workmen of Singareni Collieries Company Limited. Exs. M 5 and M 14 are the copies of the said memorandum of settlement dated 14-7-1990. Clause 13 of this memorandum of settlement relates to Drill Operators in Open Cast Mines. Under this Clause the existing vacancies of Drill Operators in Execavation Group 'D' will be filled up from the trainees basing on seniority and test amongst the trainees who have completed two years of training which includes six months training at Technical Training Centre. By virtue of this clause, the Respondent-Management by its office order dt. 13-9-1990 (Ex. M6) appointed the six employees along with others as Drill Operators Group 'D' w.e.f. 1-9-1990. Thus all these six employees were appointed as Drill Operator Excavation Group 'D' w.e.f. 1-9-1990.

8. It is also admitted that about 27 workmen were sent to undergo as Dumper Operator Trainees at Technical Training Centre, Manuguru and on on successful completion of training and passing of Departmental tests, the Management by its office order dt. 13-8-1988 (Ex. W4 and M13) appointed all the 27th workmen as Dumper Operators in Excavation Grup 'D'|Grade III w.e.f. the date they report for duty. As seen from Ex. W5 proceedings of the Manager, Technical Training Centre, Manuguru dt. 17-9-1-988. 14 Dumper Operators were relieved after duty hours on 21-9-1988 as per office order dt. 13-8-1988 (Exs. W4 and M13).

Therefore these Dumper Operators should have joined duty only on or after 22-9-1988 only.

9. In the Respondent-Company, 1st March of every year is fixed for annual increment for all the daily rated workmen. To get annual increment on first March one should have completed six months service in the post in which he is asking for increment. If anybody falls short of six months service by first March, his date of increment will be the first March of next year. This is the service conditions governing the increment of daily rated workmen in the Respondent Company. It is also not disputed that annual increment of Drill Operators as well as Dumper Operators fall on the first March of every year.

10. As earlier stated, under Exs. W4 and M13 the Dumper Operators were appointed in Excavation Group 'D' with effect from the date they report for duty. But under Ex. W6 dt. 7-3-1992 the said date of their appointment has been preponed to 1-9-1988 instead of from the date they reported for duty with a view to enable them to draw their annual increment on 1-3-1989. Ex. W6 (Ex. M8) reads as follows :

> "In partial modification of the Office Order No. P(PM) 4|4193|2708, dt. 30-8-1988 the date of appointment of the following 19 Dumper Operators, Exs. Cat. 'D' may be treated as 1-9-88 instead of from the date they report for duty to enable them to draw thetir annual increment on 1-3-89."

The names of 13 Dumper Operators are mentioned in this order. The effect of this order is that these Dumper Operators have been enabled to draw their annual increments w.e.f. 1-3-1989 as they will be completing six months service from the date of their appointment i.e 1-9-1988. The workmen under this reference are also claiming pre-ponment of their appointment as Drill Operators Trainees Category IV w.e.f. 1-9-1988 so as to enable them to draw their annual increment also w.e.f. 1-3-1989 i.e. after completion of six months service as Drill Operators Trainees Category IV. As earlier stated, under Ex. M2 these workmen were appointed as Drill Operator trainees Category IV from the date they report for duty and they submitted their joining report under Ex. M4 dt. 22-9-1988. Hence they are entitled to draw their annual increment w.e.f. 1-3-1990 only as they could not be completing six months service by 1-3-1989 and therefore the next date of their increment will be falling only on 1-3-1990. Therefore, these workmen are claiming that the order of appointment as Drill Operator Trainees Category IV should be pre-poned w.e.f. 1-9-1988 on par with the Dumper Operators.

11. The learned representative for the Petitioner submits that the workmen under this reference are seniors to the Dumper Operators, that the Dumper Operators have been given the benefit to draw their annual increments from 1-3-1989. But these workmen who are Drill Operators and who are seniors are deprived of the same and as such there is discrimination and therefore the workmen under this reference are also entitled for the same benefits.

12. The learned counsel for the Respondent-Management on the other hand submits that the two posts i.e. Drill Operators and Dumper Operators are entirely separate and the service conditions of these two posts cannot be compared with each other, that the workmen under this reference have been given the said benefit when they were appointed as Drill Operators Excavation Group 'D' under Ex. M6 and therefore they should not have any grouse for extending the same benefit to the Dumper Operators under Ex. W6 and M8. The learned counsel for the Management further contends that extending of that benefit is a managerial function and that no discrimination is shown to the Drill Operators as the said relaxation was given even to these workmen when they were appointed as Drill Operators under Ex. M6.

13. It is no doubt true that the workmen under this reference were already in service of the Respondent-Company before they were sent for training as Drill Operators to Technical Training Centre, Manuguru. M. W2 also admits in his cross-examination that the Dumper Operators selected for training under the office order dt. 30-8-1988 were not in service in the Company prior to their selection and they were direct recruits. Admittedly both the Dumper Operator Trainees as well as the workmen under this reference were relieved by the Manager, Technical Training Centre, Manuguru on 21-9-1988. But the workmen under this reference were sent to job training for three years with effect from the date they reported for duty while Dumper Operator Trainees were appointed as Dumper Operators with effect from the date on which they reported for duty. The annual incremental date for both these groups is the same i.e. first March of every year. The Dumper Operators trainees have been appointed as Dumper Operator Group 'D' on completion of their training for six months. But the workmen under this reference after cmpletion of six months training in the Technical Training Centre, Manuguru, they had to undergo three years job training as Drill Operator Trainees before they are eligible for being appointed as Drill Operator Excavation Group 'D'. As earlier stated, by virtue of the Settlement dated 14-7-1990 these workmen have been appointed as Drill Operator Excavation Group-D w.e.f. 1-9-90 even though they have not completed 3-1|2 years training under the office order dated 13-9-1990 (Ex. M6). These workmen and eleven others

were appointed as Drill Operator Group D with retrospective effect from 1-9-1990. Though the office order is dated 13-9-1990 these workmen they were placed in Excavation Group 'D' with retrospective effect from 1-9-1990 obviously with a view to enable them to draw their annual increment w.e.f. 1-3-1991. The same benefit had been extended to Dumper Operators by issuing office order Ex. W6 dt. 7-3-1992 quoted earlier preponing their date of appointment as 1-9-1988 instead of from the date they reported for duty so as to enable them to draw their annual increment on 1-3-1989. Obviously the office order under Ex. W6 have been passed on 7-3-1992 long after the same benefit was extended to the workmen under this reference. Obviously this order have been passed by the Management on administrative side examining each case separately on its merits. There cannot be any comparison between the Dumper Operators and the Drill Operators i.e. workmen under this reference. Their service conditions are entirely different, the mode of recruitment is also different. It is no doubt true that the workmen would be benefited by getting annual increment for Category IV wages if their appointment as Drill Operator Trainee Category IV is preponed to 1-9-1988. As per the existing rules, they had to undergo training for three years before they are appointed as Drill Operator Group 'D'. The benefits have been extended to them in 1990 when they were appointed as Drill Operators Group 'D'. The workmen cannot claim the said benefits as of right when they were placed in Category IV under Exs. W2 and M2. The relaxation was given to the workmen under this reference on 13-9-1990 with retrospective effect from 1-9-1990 whereas the relaxation to the Dumper Operator was given on 7-3-1992 with retrospective effect from 1-9-1988. Thus the workmen under this reference were given benefit earlier to the Dumper Operators. The relaxation given to the Dumper Operators under Exs. W6 and M8, does not in any way effect the position or the service conditions of the workmen under this reference. There is no discrimination metted out to the workmen concerned. The Management has examined each case on its own merits and circumstances and extended the benefits to the workmen under this reference as well as the Dumper Operator in the interest of Company and also the employees. It is within the discretion of the Management to do so as it is an administrative function. The workmen concerned cannot have any grievance no service condition has been violated.

14. In the light of my above discussion, I hold on Point (1) that the management of the Respondent Company is justified in not granting annual increments to the workmen under this reference w.e.f. 1-3-1989. Thus the point is thus decided in favour of the Respondent-Management and against the Petitioner-workmen.

15. POINT (2).—This point relates to the relief to be granted to the workmen under this reference. In view of my finding on Point (1) that the management is justified in not granting annual increments to the workmen under this reference w.e.f. 1-3-1989, I hold on this point that the workmen under this reference are not entitled for any relief.

16. In the result, an Award is passed stating that the action of the Management of the Respondent-Company in not granting annual increments to Sri D. Chandrasekhar Rao and five others w.e.f. 1-3-1989 is justified and that the said workmen under this reference are not entitled for any relief. The parties are directed to bear their costs.

Directed to the Stenographer, transcribed by him and corrected by me and given under my hand and the seal of this Tribunal, this the 14th day of November, 1995.

A. HANUMANTHU, Presiding Officer

Appendix of Evidence.

Witnesses Examined
for the Petitioner :
W.W1 R. Venkateswarlu

Witnesses Examined
for Respondent.
M.W1 L. Paul Charles
M.W2 G. Ilayya.

Documents marked for the Petitioner :

Ex.W1 4-2-88 Xerox copy of office order sending the six persons to training at Manuguru.

Ex. W2 1-9-88 Office order posting the trained candidates as Drill Operators Trainees issued to W.W1 along with others (xerox copy).

Ex.W3 1-9-88 Xerox copy of the proceeding regarding relieving the Drill Operators from training.

Ex.W4 30-8-88 Xerox copy of proceedings regarding appointing certain workmen as Dumper Operators in Excavation Group-D.

Ex.W5 17-9-88 Xerox copy of proceedings regarding relieving of Operators after training.

Ex.W6 7-3-92 Xerox copy of Office order dated 7-3-92 issued by General Manager (Personnel) Kothagudem.

Ex.W7 15-5-92 Representation given by the workmen to the Director (Personnel) Kothagudem.

Ex. W2 18-6-92 Representation given by the S.C. Workers Union regarding the grant of increment for the year 1989.

Ex.W9 28-12-92 Representation given by the Branch Secretary, S.C. Workers Union regarding grant of increment for the year 1989 in respect of Drill Operators.

Ex. W10 .. Minutes of conciliation held by the Asst. Labour Commissioner (Central) Vijayawada on 17-7-1993.

Ex. W11 22-7-93 Views submitted by the Union before Asstt. Labour Commissioner, Vijayawada.

Ex.W12 16-8-93 Failure report submitted to the Government of India by Asst. Lab. Commissioner, Vijayawada.

Documents marked for the Respondent.

Ex.M1 4-2-88 Copy of the office order sending persons to training at Manuguru (Original of Ex.W1).

ExM2 1-9-88 Office order given after the training to W.W1 along with others.

Ex.M3 17-9-88 Proceedings of relieving of Drill Operators Trainess by the Training Manager, Technical Training Centre, Manuguru.

Ex.M4 22-9-88 Joining reports of the Drill Operators.

Ex. M5 17-7-90 Memorandum of settlement arrived at with S.L. Workers Union before the Asst. Labour Commissioner (C) Hyderabad on 14-7-1990.

Ex.M6 13-9-90 Office Order from the Agent, JK, Open Cast Yellandu regarding placement of Excavation Group 'D' w.e.f. 1-9-1990 for the Operator Trainees of J.K. Open Cast Mine, Yellandu area.

Ex. M7 .. Qualification of six Drill Operators and requisite qualification.

Ex.M8 7-3-92 Office order regarding modification of office order dated 30-8-88 regarding preponing of the date of increment to 1-3-89 from 1-9-88 of 19 Dumper Operators.

Ex. M9 .. Xerox copy extract of N.C. W.A.

Ex.M10 4-2-88 Xerox copy of appointment of petitioners as Drill Operator Trainees.

Ex. M11 .. Xerox copy of the extract of requisite qualifications for the training.

Ex.M12 3-8-88 Xerox copy of the office order No. P(PM)207|95 for selection of drivers.

Ex.M13 30-8-88 Xerox copy of the office order No. P(PM)4|4193|2708 appointing Dumper Operators in Excavation Group 'D'|Grade III.

Ex.M14 17-7-90 Xerox copy of the Settlement before the Assistant Commissioner of Labour, Hyderabad.

नई दिल्ली, 16 जनवरी, 1996

का.आ. 351.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू सी एल के प्रबन्धतंत्र के सबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पचपट को प्रकाशित करती है, जो केन्द्र सरकार को 12-1-96 को प्राप्त हुआ था।

[सं० एल-22012/74/85-डी V]
राजा लाल, डैस्क अधिकारी

New Delhi, the 16th January 1996

S.O. 351.—In pursuance of Section 17 of the Inustrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Jabalpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of W.C. Ltd. and their workmen, which was received by the Central Government on the 12-1-96.

[No. L-22012|74|85-DV]
RAJA LAL, Desk Officer.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR (MP)

CASE REF. NO. CGIT|LC(R)(35)|1986

BETWEEN

Shri Amrit Lal S|o Shri Baijnath represented through the Secretary M.P. Colliery Workers Federation, Jamuna & Kotma Area Branch, P.O. Bhadra Colliery, District Shahdol (MP).

AND

The Suptd. of Mines|Agent Bhadra Colliery of Jamuna & Kotma Area of WCL P.O. Bhadra Colliery, District Shahdol (MP).

PRESIDED IN : By Sri Arvind Kumar Awasthy.

APPEARANCES :

For Workman : Shri S. K. Rao. Advocate.
For Management : Sri P. S. Nair, Advocate.

INDUSTRY : Coal Mines DISTRICT : Shahdol (MP).

AWARD

Dated : December, 26, 1995

This is a reference made by the Central Government, Ministry of Labour, vide its Notification No. L-22012(74)|85-D.V. Dated 20-2-1986 for adjudication of the following industrial dispute :

SCHEDULE

"Whether the dismissal of Shri Amrit Lal s|o Shri Baijnath, Vehicle Driver of Bhadra Colliery with effect from 23-4-1983 by the Supdt. of Mines| Agent of Bhadra Colliery of Jamuna & Kotma Area of WCL vide letter No. WC|BC-A12|72|84 dated 11-4-1984, is justified ? If not, to what relief he is entitled ?"

2. Admitted facts of the case are that Shri Amrit Lal was working as a Vehicle Driver at Bhadra Colliery, District Shahdol (MP); that on 25-4-83 the charge-sheet was issued against the workman on the allegation that the workman on 23-4-83 while on duty as Dumper Driver in third shift unauthorisedly dumped ten tonnes coal at a private place with malafide intention. It is also not in dispute that Shri K. N. Srivastava, Manager, Bhadra Colliery, was appointed as the Enquiring Officer and ex-parte enquiry was conducted against the workman ; that the workman was dismissed from service with effect from 23-4-1983.

3. The case of the management is that on 23-4-83 the workman while working as a Dumper Driver in the third shift at about 4 p.m. took the loaded Dumper of the management for stocking the incline of the management, but the workman dumped the coal in an unauthorised and a private place ; that the Enquiry Officer issued several notices or the appearance of the workman in the enquiry, but the workman did not attend the enquiry; that the notice was served by registered post and also published in the newspaper and one of the notice was served on the wife of the workman; that the workman did not attend the enquiry and ex-parte enquiry was conducted against the workman; that the grave misconduct of committing the theft of the property of the management was found proved against the workman and his services were terminated accordingly.

4. The case of the workman is that false and fabricated allegations were cooked up against the workman and the Enquiry Officer made no attempt to inform the workman about the domestic enquiry and conducted the ex-parte enquiry in violation of the principles of natural justice. It is alleged that the findings of the Enquiry Officer are perverse and the punishment awarded to the workman is liable to be set aside.

5. My learned predecessor has framed the issues and on 15-7-1986 passed the order holding that the domestic enquiry are vitiated on account of the violation of principles of natural justice. management filed he petition against the order of the Tribunal and ultimately on 20-2-90 the petition was withdrawn.

6. The management has examined Shri Shiv Ram, Senior Under Manager, and the Security Guards Sunder and Kalicharan.

7. The workman has not examined any witness. The point for consideration is whether the management has succeeded in proving the alleged misconduct and if so, whether the punishment of dismissal from service awarded is proportionate to the proved misconduct.

8. The witness of the management, Shri Sheo Ram, Shift Incharge at Bhadra Colliery has stated that the coal of Jamuna C.H.P. was being dumped at 1 & 2 Incline by the Colliery Dumper and the workman, Shri Amrit Lal, Vehicle Driver of the Dumper took the coal from the colliery, but instead of dumping it at the Incline of the Colliery, dumped the coal at a private place. Shri Sheo Ram has further stated that the Guard and the Security Inspector of the Colliery made an attempt to stop the Dumper, but the workman, Shri Amrit Lal, did not stop the truck and took away the truck in a high speed. Further two witnesses of the management, Sunder and Kalicharan, who were ing in the security at the relevant time have affirmed that the workman, Shri Amrit Lal was driving the Dumper and on suspicion made the signal to stop the Dumper, but the workman tried to crush them and escaped by speeding the Dumper. Sunder and Kalicharan have further stated that the coal was unloaded by the workman on the road side and that was not the place to unload the coal.

9. Shri Sheo Ram, Shri Sunder and Shri Kali Charan were cross-examined by the Counsel of the workmen and there is no contradiction or an iota of evidence to create the doubt in the veracity of the statement of these witnesses. The appearance of the witnesses at the time of the alleged incident is natural and there is noth ng to show that these two witnesses were in any way interested in giving false statement on oath against the workman. Consequently, on the basis of the management's witnesses, Sheo Ram, Sunder and Kali Charan, it is proved beyond reasonable doubt that the workman, Shri Amrit Lal, made an attempt to commit the theft of the property of the colliery by unauthorisedly unloading the ten tonnes coal in the private place. These circumstances show that the workman after unauthorisedly unloading the coal made an attempt to threaten the guards on

duty and ran away by speeding the truck is also fully borne out from the statement of the management's witnesses.

10. The workman has not led any evidence to prove his case. Enumerable opportunity were granted to the workman to adduce the evidence. Even at the stage of the domestic enquiry the workman remained absent inspite of repeated notices by the Enquiring Officer. The workman also took opportunity to file the written arguments, but the written arguments were not filed. However, coming to the point, the workman has not disclosed his defence in cross-examination of the management's witnesses and he has also not assigned any reason why the coal was dumped by him on an unauthorised private place. All these circumstances, corroborates the statement of the witnesses of the management to prove that the workman was involved in the commission of theft of the ten tonnes coal while on duty.

11. The misconduct of theft is of grave nature and the attending circumstances in which the theft was committed adds to its gravity. In this back drop, the dismissal of the workman from service is in proportion to the proved misconduct.

12. Consequently, dismissal of workman Shri Amrit Lal, with effect frm 23-4-83 by order dated 11-4-84 is held just and proper. Reference is answered in favour of the management. Parties to bear their own costs.

ARVIND KUMAR AWASTHY, Presiding Officer

नई दिल्ली, 17 जनवरी, 1996

का. आ. 352 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स भारत कोकिंग कोल लि. की गोपाली चक कोलियरी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में, केन्द्रीय सरकार औद्योगिक अधिकरण (सं. 2) धनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-1-96 को प्राप्त हुआ था।

[संख्या एल—20012/239/85-डी. 3 (ए)/आई. आर. (कोल-1)]
ब्रज मोहन, डैस्क अधिकारी

New Delhi, the 17th January, 1996

S.O. 352.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, (No. 2), Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Gopalichak Colliery of M|s. Bharat Coking Coal Ltd., and their workmen, which was received by the Central Government on 15-1-96.

[No. L-20012|239|85-D.III(A)|IR (Coal-1)]
BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 2) AT DHANBAD

PRESENTS :

Shri D. K. Nayak, Presiding Officer

In the matter of an Industrial dispute under Section 10(1)(d) of the I.D. Act., 1947.

Reference No. 82 of 1986

PARTIES :

Employers in relation to the management of Gopalichak Colliery of Bharat Coking Coal Limited and their workmen.

APPEARANCES :

On behalf of the workmen.—None.
On behalf of the employers.—Shri B. Joshi, Advocate.

STATE : Bihar INDUSTRY : Coal.

Dated, Dhanbad, the 8th January, 1996

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012 (239)|85-D.III(A), dated, the 28th January, 1986.

SCHEDULE

"Whether the action of the management of Gopalichak Colliery of M|s. Bharat Coking Coal Limited in dismissing from service with effect from 12-4-1984 Shri Parmeshwar Turi, Miner|Loader is justified ? If not, to what relief is the workman concerned entitled ?"

2. In this case neither the workmen|union appeared nor took any steps. It appears from the record of this case that several notices were issued to the workmen|union. But inspite of issuance of notices to them they did not turn up. It also appears from the record that the management along represented through their Advocate Shri B. Joshi. It therefore, leads me to an inference that the workmen|union are not interested to pursue their claim before this Tribunal. In the circumstances, I have no other alternative but to pass a 'No dispute' Award in this reference.

D. K. NAYAK, Presiding Officer

नई दिल्ली, 17 जनवरी, 1996

का. आ. 353 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स सेन्ट्रल कोलफील्ड्स लि. की बोकारो कोलियरी के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में, केन्द्रीय सरकार औद्योगिक अधिकरण, (सं. 2) धनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-1-96 को प्राप्त हुआ था।

[संख्या एल-24012/17/86-डी 4 (बी)/आई. आर. (कोल—1)]
ब्रज मोहन, डैस्क अधिकारी

New Delhi, the 17th January, 1996

S.O. 353.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, (No. 2) Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bokrao Colliery of Central Coalfields Ltd., and their workmen, which was received by the Central Government on 16-1-96.

[No. L-24012|17|86-D-IV(B)|IR(Coal-I)]
BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 2) AT DHANBAD

PRESENT :

Shri D. K. Nayak, Presiding Officer

In the matter of an Industrial dispute under Section 10(1)(d) of the I.D. Act., 1947.

Reference No. 287 of 1986

PARTIES :

Employers in relation to the management of Bokaro Colliery of Central Coalfields Limited and their workmen.

APPEARANCES :

On behalf of the workmen.—None.
On behalf of the employers.—Shri R. S. Murthy, Advocate.

STATE : Bihar INDUSTRY : Coal.

Dated, Dhanbod, the 12th January, 1996

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-24012 (17/86-D.IV(B), dated the 24th August, 1986.

SCHEDULE

"Whether the action of the management of Bokaro Colliery of M|s. C.C. Ltd., P.O. Sunday Bozar, Dist. Giridih in not promoting Shri Kurban Mian E. P. Helper and allowing his juniors to supersede since 1965 is legal and justified ? If not, to what relief the workman is entitled ?"

2. In this case neither the workmen|union appeared nor took any steps. It appears from the record of this case that several notices were issued to the workmen|union. But inspite of the issuance of notices to them they did not turn up. It also appears that the management made their appearance through the learned Advocate Shri R. S. Murthy. It therefore, leads me to an inference that the workmen| union are not interested to pursue their claim before this Tribunal. In the circumstances, I have no other alternative but to pass a 'No dispute' Award in this reference.

D. K. NAYAK, Presiding Officer

नई दिल्ली, 17 जनवरी, 1996

का. आ. 354.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार वैस्टर्न मारन कोकिंग कोल लि. की गोपालीचक कोलियरी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में, केन्द्रीय सरकार औद्योगिक अधिकरण, (सं. 2) धनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-1-96 को प्राप्त हुआ था ।

[संख्या एल-20012/378/85 डी-3 (ए)/आई.आर. (कोल-1)]

ब्रज मोहन, डैस्क अधिकारी

New Delhi,the 17th January, 1996

S.O. 354.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, (No. 2), Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Gopalichak Colliery of M|s. Bharat Coking Coal Ltd., and their workmen, which was received by the Central Government on 15-1-96.

[No. L-20012/378/85-D.III(A)/IR(Coal-I)]

BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 2) AT DHANBAD

PRESENT :

Shri D. K. Nayak, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

Reference No. 147 of 1986

PARTIES :

Employers in relation to the management of Gopalichak Colliery of M|s. B.C.C.L. and their workmen.

APPEARANCES :

On behalf of the workmen.—None.
On behalf of the employers.—Shri B. Joshi, Advocate.

STATE : Bihar. INDUSTRY : Coal.

Dated, Dhanbad, the 8th January, 1996

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012 (378)|85-D.III(A), dated the 20th March, 1986.

HEDULE

"Whether the demand of Rashtriya Colliery Mazdoor Sangh that the management of Gopalichak Colliery of M|s. Bharat Coking Coal Limited should regularise their workers, S|Smt. Durgawati Devi and Manjhushree Das as Clay Cartridge Makers is justified ? If so, to what relief are these workers entitled and from what date ?".

2. In this reference neither the workmen|union appeared nor took any steps. It appears from the record of this case that several notices were issued to the workmen. But inspite of issuance of notices to them they did not turn up. But the management all through represented through their Advocate Shri B. Joshi. It therefore leads to me an inference that the workmen|union are not interested to press their claim before this Tribunal. In the circumstances, I have no other alternative but to pass a 'No dispute' Award in this reference.

D. K. NAYAK, Presiding Officer

नई दिल्ली, 17 जनवरी, 1996

का. आ. 355.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार फोन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, जयपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-1-96 को प्राप्त हुआ था ।

[संख्या एल-40012/8/91—आई. आर. (डी. यू.)]

के. वी. बी. उन्नी, डैस्क अधिकारी

New Delhi, the 17th January, 1996

S.O. 355.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Jaipur as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of Phones and their workmen, which was received by the Central Government on 16-1-96.

[No. L-40012/8/91-IR(DU)]

K. V. B. UNNY, Desk Officer

अनुबंध—1

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं. सी. आई. टी. 59/91

रैफरेंस :—केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश क्र. एल—40012/8/91/आई. आर. डी. यू./दिनांक 9-10-91

अध्यक्ष, अखिल भारतीय सफाई मजदूर कांग्रेस, जोधपुर

—प्रार्थी

बनाम

1. सब डिवीजनल अफीसर, फोन्स (प्रथम) जोधपुर।

2. दूर संचार विभाग, नई दिल्ली।

—अप्रार्थीगण

उपस्थित

माननीय न्यायाधीश श्री के. एल. व्यास, आर. एच. जे. एस.

प्रार्थी की ओर से : श्री एम. एफ. बेग

अप्रार्थीगण की ओर से : श्री आर. जी. गुप्ता

दिनांक अवार्ड : 28-8-95

अवार्ड

केन्द्रीय सरकार द्वारा निम्न विवाद अधिनिर्णय हेतु निर्देशित किया गया है :

Whether the management of Department of Telecommunications is just in refusing regularisation of services of Smt. Kamla w/o. Shri Devaram, Partime Sweeper under S.D.O. Phones (1st) Jodhpur ? If not, to what Relief is the worker entitled ?'

2. श्रमिक द्वारा प्रस्तुत क्लेम में यह बताया गया है कि उसकी नियुक्ति अप्रार्थी सं. 1 द्वारा 14-6-76 को अंशकालीन सफाई कर्मचारी के रूप में की गई थी व तब से लगाते लगातार नियमित रूप से विभाग में कार्य किया है। विभाग की नीति के अनुसार वर्ष 1989 में श्रमिक को सफाई कर्मचारी के पद पर नियमित नियुक्ति देने के लिए कार्यवाही प्रारंभ की गई किन्तु नियम विरुद्ध नियमित नियुक्ति नहीं दी गई जब कि श्रमिक के समान नियुक्त अन्य अंशकालीन कर्मचारीगण को 22-3-88 के आदेश से नियमित नियुक्ति प्रदान की गई। श्रमिक का कथन है कि वह प्रातः 9.00 बजे से शाम 5.00 बजे तक विपक्षी के कार्यालय में अपना कार्य करती थी व 18-3-89 के आदेश से विभाग से यह निर्देश दिया था कि जिस अंशकालीन कर्मचारी से 7 वर्ष की सेवा पूरी की है उसे नियमित नियुक्ति प्रदान की जावे। अनुतोष यह मांगा गया है कि 25-6-83 से श्रमिक को नियमित कर्मचारी घोषित किया जावे व उसी के अनुसार वेतनमान का बकाया लाभ स्वीकृत किया जावे।

3. नियोजक की ओर से प्रस्तुत जवाब में यह स्वीकार किया गया है कि श्रमिक कमला को 18-6-76 से अंशकालीन सफाई कर्मचारी के रूप में नियुक्ति दी गई थी पर तब से वह लगातार इस पद पर कार्यरत है। विभाग द्वारा अंशकालीन श्रमिक को नियमित करने के आदेश को अस्वीकार नहीं किया गया है व श्रीमती मायरी अंशकालीन कर्मचारी को नियमित नियुक्ति देना भी जवाब में स्वीकार किया गया है। इसके अलावा तथ्यों पर यह बताया गया है कि वर्तमान श्रमिक द्वारा कार्यालय में सुबह 9.00 बजे से शाम 5.00 बजे तक ड्यूटी नहीं दी जाती थी तथा जो सफाई का कार्य उसे दिया हुआ था वह क्षेत्रफल के अनुसार 3.142 घंटे का कार्य था व इस कारण विभाग के निर्देशानुसार श्रमिक को नियमित नहीं किया गया क्योंकि आदेश में यह शर्त अंकित थी कि जिस कर्मचारी द्वारा 4 घंटे या उससे अधिक कार्य अंशकालीन कर्मचारी के रूप में किया जाता है उसे ही नियमित किया जावे। अन्य कोई प्रतिरक्षा जवाब में नहीं ली गई है।

4. श्रमिक की ओर से साक्ष्य में उसका स्वयं का व एक गवाह श्री दयाराम का शपथ पत्र प्रस्तुत किया गया है। नियोजक की ओर से 4-2-94 को एक गवाह प्रमोद कुमार खत्री का शपथ पत्र प्रस्तुत किया गया था किन्तु गवाह उपस्थित नहीं होने से न तो शपथ पत्र सत्यापित किया गया व न ही गवाह से कोई जिरह का अवसर श्रमिक को उपलब्ध कराया गया। इसी प्रकार 8-12-93 को एक गवाह महेश चन्द्र गुप्ता का शपथ पत्र प्रस्तुत किया गया था किन्तु वह गवाह प्रति-परीक्षण हेतु उपस्थित नहीं हुआ व श्रमिक को उससे जिरह का अवसर उपलब्ध नहीं हो सका। निष्कर्ष यह है कि जो दो शपथ पत्र विभाग की ओर से प्रस्तुत किये गये हैं वे साक्ष्य में विधि प्रावधानों के अनुसार ग्राह्य नहीं हैं व उन पर कोई भी विचार नहीं किया जा सकता। इसी प्रकार विभाग द्वारा जवाब व शपथ पत्र के साथ कुछ प्रलेख प्रस्तुत किये गये हैं किन्तु उन्हें प्रदर्शित व प्रमाणित नहीं कराया गया है व न ही उन प्रलेख पर श्रमिक को जिरह का अवसर उपलब्ध हुआ है इसलिए उन प्रलेख के आधार पर भी श्रमिक के कथन पर कोई प्रतिकूल प्रभाव होना नहीं माना जा सकता।

5. श्रमिक ने अपने शपथ पत्र में यह बताया है कि उसकी नियुक्ति यद्यपि अंशकालीन कर्मचारी के रूप में की गई थी किन्तु उसकी ड्यूटी कार्यालय में सुबह 9.00 बजे से शाम 5.00 बजे तक थी व इस बीच उससे कार्यालय एवं स्टोर की सफाई का व अन्य कार्य लिया जाता था। उसने यह भी बताया है कि क्षेत्रफल के आधार पर भी सफाई का काम 3.245 घंटे का नहीं होता है क्योंकि उसमें स्टोर के क्षेत्रफल को नहीं जोड़ा गया है। प्रथम नियुक्ति 14-6-76 को होना श्रमिक ने बताया है व विभाग के जवाब में 18-6-76 से यह यह नियुक्ति होना बताया गया है इसलिए महत्वपूर्ण रूप से दोनों अभिकथनों में कोई अधिक विरोधाभास नहीं है। श्रमिक के दूसरे गवाह दयाराम ने श्रमिक की नियुक्ति अंशकालीन कर्मचारी के रूप में 14-6-76 को होना, तब से लगातार इस रूप में विभाग में कार्य करना व अन्य अंशकालीन श्रमिकों को विभाग द्वारा नियमित करना व श्रमिक के क्लेम को अकारण अस्वीकृत करना बताया है। शपथ पत्र में विभाग के आदेश 1-5-89, 18-3-89 का इस गवाह ने उल्लेख किया है जिनका सुविधा के लिए प्रदर्श डब्ल्यू—1 व 2 अंकित किया जाता है। प्रदर्श डब्ल्यू—1 पत्र श्रमिक के नाम विभाग द्वारा संबोधित किया हुआ है जिसमें उसकी ड्यूटी स्टोर व वर्कशॉप में सफाई कार्य हेतु सुबह 9.00 बजे से दोपहर 1.00 बजे में लगाने का उल्लेख है। प्रदर्श डब्ल्यू—2 18-3-89 का विभाग का आदेश है जिसमें साथरी के अलावा अन्य अंशकालीन/आकस्मिक कर्मचारियों को नियमित नियुक्तियां 7 वर्ष की सेवा पूरी होने पर विभाग निर्देशानुसार दी गई हैं। गवाह दयाराम ने अपने बयान में यह भी उल्लेख किया है कि विभाग के आदेश क्रमांक 18-11-88 व 9-1-89 के अनुसार 7 वर्ष की सेवा अवधि पूरी करने वाले अंशकालीन कर्मचारियों को प्रदर्श डब्ल्यू—2 के जरिये नियमित नियुक्ति दी गई थी व उसमें कार्य के घंटों की कोई शर्त उल्लिखित नहीं थी प्रदर्श डब्ल्यू—2 आदेश में विभाग के उक्त दोनों परिपत्रों का संदर्भ है। विभाग द्वारा 17-5-89 के एक अन्य परिपत्र की फोटो प्रति प्रस्तुत की गई है जिसमें 4 घंटे या उससे अधिक कार्य करने वाले अंशकालीन कर्मचारियों को नियमित नियुक्ति देने का निर्देश दिया हुआ है।

6. श्रमिक की ओर से प्रस्तुत गवाह दयाराम ने जिरह में इस सुझाव को अस्वीकार किया है कि श्रमिक मात्र दो घंटे कार्य करती थी व इसके विपरीत उनका कथन है कि वह रोज 6-7 घंटे कार्य करती थी। प्रदर्श एम—1 विभाग के पत्र व उनके साथ संलग्न एक मानचित्र व कार्य समय की गणना के संबंध में गवाह ने बताया है कि यह प्रलेख सही रूप से तैयार नहीं किया गया है तथा इस विवाद के संस्थित होने के बाद तैयार किया गया है व उसमें स्टोर के क्षेत्रफल को भी शामिल किया हुआ नहीं है। प्रदर्श एम—1 पत्र व उसके साथ संलग्न मानचित्र व क्षेत्रफल के अनुसार की गई सफाई के घंटों की गणना के प्रलेख को विभाग ने किसी भी गवाह से प्रमाणित नहीं करवाया है तथा इस प्रलेख से यह भी स्पष्ट नहीं होता है कि उसमें स्टोर का क्षेत्रफल भी शामिल है जबकि श्रमिक को दिये गये प्रदर्श डब्ल्यू—1 आदेश में कार्यालय व स्टोर दोनों की सफाई करने का निर्देश है। प्रदर्श डब्ल्यू—1 आदेश में श्रमिक की ड्यूटी का समय सुबह 9.00 बजे से दोपहर 1.00 बजे का बताया गया है। इस प्रलेख में उल्लिखित तथ्यों को अस्वीकार करने का कोई कारण विभाग की ओर से प्रस्तुत नहीं किया गया है व इसके विपरीत यह प्रलेख स्वयं उन्होंने की प्रशासनिक स्वीकृति के रूप में है। दयाराम ने अपनी जिरह में यह बताया है कि सफाई का पूरा कार्य करने में उसे दो घंटे का समय लगता है किन्तु साथ ही उसने जिरह में यह बताया है कि वह कार्यालय के पूरे समय में अपनी ड्यूटी पर रहती है, उसकी हाजिरी दर्ज होती थी व सफाई के अलावा अन्य कार्य भी वह करती थी। उसका यह भी कथन है कि इस विवाद के प्रस्तुत होने के बाद उससे स्टोर की सफाई का काम लेना बंद कर दिया था। इस मौखिक साक्ष्य के अलावा अन्य कोई भी साक्ष्य किसी पक्ष की ओर से प्रस्तुत नहीं की गई है। जिन तथ्यों व प्रलेखीय साक्ष्य पर विवेचन किया गया है उनसे जो बिन्दु श्रमिक के पक्ष में विनिश्चित होते हैं वे इस प्रकार हैं कि वह 14-6-76 से अंशकालीन कर्मचारी के रूप में लगातार विभाग में काम कर रही है, उसकी ड्यूटी का समय 4 घंटे या उससे अधिक का है, विभाग के आदेश दिनांक 18-11-88 व 9-1-89 के अनुसार 7 वर्ष की सेवा अंशकालीन कर्मचारी के रूप में करने वाले श्रमिकों को नियमित नियुक्ति देने के निर्देश हैं, 17-5-89 के परिपत्र के अनुसार भी उन अंशकालीन कर्मचारियों को नियमित नियुक्ति देने का प्रावधान है जिन्होंने 7 वर्ष की सेवा पूरी कर ली है व जिनकी ड्यूटी का समय 4 घंटे या उससे अधिक का है, श्रमिक को नियमित करने के संबंध में विभाग द्वारा समस्त सूचना संकलित की गई थी तथा उसे नियमित नियुक्ति मात्र इस आधार पर नहीं दी गई क्योंकि उसकी ड्यूटी का समय मात्र 4 घंटे से कम का है। अन्य कोई प्रतिरक्षा विभाग द्वारा जवाब में नहीं ली गई है। प्रदर्श डब्ल्यू—2 आदेश से यह भी स्पष्ट है कि 7 वर्ष की सेवा अंशकालीन कर्मचारी के रूप में करने वाले अन्य श्रमिकों को नियमित किया गया है। समस्त प्रमाणित तथ्यों व विधिक स्थिति देखते हुए श्रमिक नियमित नियुक्ति प्राप्त करने की अधिकारिणी है। श्रमिका के विद्वान प्रतिनिधि ने 1985 II एल. एल. एन (एस. सी.) 1037 का एक निर्णय प्रस्तुत किया है जिसमें यह प्रतिपादित किया गया है कि विपक्षी की विपरीत साक्ष्य के अभाव में श्रमिका द्वारा अभिकथित तथ्यों को प्रमाणित मानने की अपेक्षा न्यायाधिकरण द्वारा की जानी चाहिये। एक अन्य निर्णय [illegible] समोली बनाम उत्तर प्रदेश राज्य 1986 एल. एल. जे. (एस. सी.) 131 का निर्णय भी श्रमिक की ओर से प्रस्तुत किया गया है जिसमें यह प्रतिपादित किया गया है कि समान कार्य के लिए समान वेतन प्रत्येक कर्मचारी को स्वीकृत किया जाना चाहिये व इस संबंध में विभाग की यह प्रतिरक्षा स्वीकार्य नहीं हो सकती कि उनके यहां श्रमिक को नियमित करने के लिए कोई स्वीकृत पद उपलब्ध नहीं है। वर्तमान प्रकरण में विभाग की यह प्रतिरक्षा भी नहीं है कि उनके यहां नियमित पद स्वीकृत नहीं है।

7. श्रमिका ने 1983 से नियमित नियुक्ति का अनुरोध माना है परन्तु विभाग द्वारा सर्वप्रथम 18-3-89 के आदेश से अन्य अंशकालीन कर्मचारियों को नियुक्ति दी गई है इसलिए उस तिथि से पूर्व श्रमिका को यह अनुतोष स्वीकृत नहीं किया जा सकता। इसके अलावा यह भी स्पष्ट है कि श्रमिक ने आज तक अंशकालीन कर्मचारी के रूप में विभाग में कार्य किया है व यह भी मान्य स्थिति है कि अंशकालीन व पूर्णकालीन कर्मचारी के कार्य में भिन्नता होती है व श्रमिक को वर्तमान में भी कन्सोलीडेटेड (एक मुश्त) वेतन उसके कार्य के अनुसार अंशकालीन कर्मचारी के रूप में स्वीकृत किया हुआ है। इन परिस्थितियों में श्रमिका को 18-3-89 से नियमित सफाई कर्मचारी के रूप में नियुक्ति प्राप्त करने का अधिकार उपलब्ध होता है किन्तु विशिष्ट परिस्थितियों को देखते हुए नियमित वेतन श्रृंखला का एरियर उस तिथि से स्वीकृत करने का कोई न्यायोचित कारण नहीं बनता।

8. निर्देशित विवाद का अधिनिर्णय इस प्रकार किया जाता है कि श्रमिका श्रीमति कमला 18-3-89 से सफाई कर्मचारी के रूप में नियमित वेतन श्रृंखला में नियुक्ति प्राप्त करने की व उस तिथि से उस पद पर वरिष्ठता प्राप्त करने की अधिकारिणी है किन्तु वेतनमान का वास्तविक लाभ इस अधिनिर्णय की तिथि से ही देय होगा।

9. अधिनिर्णय आज दिनांक 28-8-1995 को लिखाया जाकर सुनाया गया जो केन्द्र सरकार को प्रकाशनार्थ अन्तर्गत धारा 17 (1) औद्योगिक विवाद अधिनियम के भेजा जावे।

के. एल. व्यास, न्यायाधीश

नई दिल्ली, 17 जनवरी, 1996

का.आ. 356.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार फोन्स के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, जयपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-1-96 को प्राप्त हुआ था।

[संख्या एल-40012/51/89-आई.आर. (डी.यू.)]

के. वी. बी. उन्नी, डैस्क अधिकारी

New Delhi, the 17th January, 1996

S.O. 356.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Jaipur as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of Phones and their workmen, which was received by the Central Government on 16-1-96.

[No. L-40012/51/89-IR(DU)]

K. V. B. UNNY, Desk Officer

अनुबन्ध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं. सी.आई.टी. 102/89

रेफरेंस: केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली की अधिसूचना

क्रमांक एल 40012/51/89 आई.आर.डी.यू. दि. 10-10-89

मोहम्मद इस्माईल पुत्र श्री नेनू खां

—प्रार्थी

बनाम

1. मंडल डिवीजनल ऑफीसर (फोन्स) अजमेर।

2. सहायक अभियन्ता, माईक्रोवेव प्रोजेक्ट, पी.एन.टी. अजमेर।

—अप्रार्थीगण

उपस्थित

माननीय न्यायाधीश श्री के. एल. व्यास, आर. एच. जे. एम.

प्रार्थी की ओर से : श्री एम.एफ. बेग

अप्रार्थीगण की ओर से : श्री यू. डी. शर्मा

दिनांक अवार्ड : 30-5-1995

अवार्ड

केन्द्र सरकार द्वारा निम्न विवाद अधिनिर्णय हेतु निर्देशित किया गया है :

"Whether the action of the management of Telecom Department in terminating the services of Shri Mohd. Ismail, s/o Shri Nenukhan casual worker w.e.f. 30-12-84 is justified ? If not to what relief the worker is entitled ?"

2. श्रमिक ने अपने क्लेम का आधार यह बताया है कि उसकी नियुक्ति अक्टूबर 1983 में अप्रार्थी सं. 1 द्वारा अप्रार्थी सं. 2 के अधीन की गई थी तथा वहां उसने 86 दिन काम किया था व उसके पश्चात् उसे फरवरी 1984 में जोधपुर भेज दिया गया जहां उसने सहायक अभियन्ता टेलीकाम प्रोजेक्ट जोधपुर के अधीन 204 दिन तक काम किया था । इसके पश्चात् उसकी सेवाएं पुनः अजमेर क्षेत्र में स्थानान्तरित कर दी गई व वहां से उसकी सेवाएं 30-12-84 को समाप्त की गई । इस प्रकार श्रमिक का यह कथन है कि सेवा मुक्ति से पूर्व उसने लगातार 240 दिन से अधिक काम किया था व नियोजक द्वारा धारा 25एफ.जी.एच. औद्योगिक विवाद अधिनियम 1947 (जिसे बाद में अधिनियम संबंधित किया जायेगा) के प्रावधानों की पालना के बिना उसकी सेवाएं समाप्त की गई जो अवैध है व इसलिए उसे पुनः नौकरी में बहाल करने व बकाया वेतन दिलवाने का आदेश दिया जावे ।

3. अप्रार्थी सं. 1 व 2 की ओर से अलग-अलग क्लेम का प्रत्युत्तर प्रस्तुत किया गया है। अप्रार्थी सं. 2 के जवाब में यह बताया गया है कि दोनों अप्रार्थीगण अलग-अलग एवं स्वतंत्र इकाई हैं इसलिए एक दूसरे के अधीन की गई सेवाओं को एक साथ नहीं जोड़ा जा सकता । इसके अलावा यह बताया गया है कि दिनांक 24-9-83 को नियोजन कार्यालय के जरिये 100 श्रमिकों को तीन माह के लिए 9 रुपये रोज मजदूरी पर रखा गया था व उनमें श्रमिक मोहम्मद इस्माईल भी शामिल था । यह कार्य समाप्त होने पर 13-2-84 को मोहम्मद इस्माईल की सेवाएं समाप्त की गई व इस प्रकार उसने कुल 86 दिन वहां काम किया था । अजमेर से श्रमिक को जोधपुर भेजने के तथ्य को जवाब में अस्वीकार किया गया है व यह भी बताया गया है कि दोनों कार्यालय प्रशासनिक रूप से स्वतंत्र हैं इसलिए श्रमिक का स्थानान्तरण अजमेर से जोधपुर नहीं किया जा सकता था। क्लेम के पद सं. 6 के उत्तर में यह बताया गया है कि जोधपुर से वापस श्रमिक को अजमेर कार्य के लिए नहीं बुलाया गया व न ही 30-12-84 को उसकी सेवाएं समाप्त की गई। जवाब का सार यह है कि श्रमिक ने अप्रार्थी सं. 1 के अधीन 24-9-83 से 13-2-84 तक कार्य किया था व उसके पश्चात् वह स्वयं सेवा छोड़कर चला गया था इसलिए उसका मामला छंटनी या सेवा मुक्ति की परिभाषा में नहीं आता । यह आपत्ति भी ली गई है कि जोधपुर कार्यालय को इस विवाद में पक्षकार नहीं बनाया गया है इसलिए भी जोधपुर की सेवाओं के संबंध में कोई अधिनिर्णय पारित नहीं किया जा सकता ।

4. अप्रार्थी सं. 1 की ओर से जो अलग जवाब प्रस्तुत किया गया है उसमें यह बताया गया है कि 1-11-84 से श्रमिक ने अप्रार्थी सं. 1 के अधीन कार्य करना प्रारम्भ किया था व 22-12-84 से उसने स्वेच्छा से काम पर आना बंद कर दिया व इस प्रकार श्रमिक ने उनके अधीन मात्र 42 दिन कार्य किया था। 30-12-84 तक कार्य करने के तथ्य को उसके पश्चात् नियोजक द्वारा सेवा समाप्ति के तथ्य को जवाब में अस्वीकार किया गया है। यह भी बताया गया है कि चूंकि श्रमिक ने अप्रार्थी सं. 1 के अधीन मात्र 42 दिन कार्य किया था तथा वह स्वेच्छा से सेवा छोड़कर चला गया इसलिए धारा 25एफ, जी व एच अधिनियम के प्रावधानों की पालना करना आवश्यक नहीं था ।

5. मौखिक साक्ष्य में श्रमिक की ओर से उसका स्वयं का शपथ पत्र प्रस्तुत किया गया है व अप्रार्थी सं. 1 की ओर से श्री एच.एस. गुप्ता सहायक अभियन्ता व अप्रार्थी सं. 2 की ओर से श्री चन्द्र मोहन भाटिया सहायक अभियन्ता के बयान शपथ-पत्र के जरिये करवाये गये हैं । दोनों पक्षों की ओर से कुछ प्रलेख भी प्रदर्शित करवाये गये हैं। बहस दोनों पक्षों की सुनी गई। अप्रार्थीगण की ओर से लिखित बहस भी पेश हुई है ।

6. विवाद जो निर्देशित किया गया है उसके अनुसार यह अभिनिर्धारित किया जाना है कि दिनांक 30-12-84 से श्रमिक की सेवाएं समाप्त करना उचित है अथवा नहीं । दोनों पक्षों के अभिकथनों व साक्ष्य को देखते हुए सर्वप्रथम यह विनिश्चय किया जाता है कि क्या प्रथम नियुक्ति के पश्चात् फरवरी 1984 में श्रमिक को अप्रार्थी सं. 2 द्वारा जोधपुर कार्य हेतु भेजा गया या स्थानान्तरित किया गया । इस संबंध में श्रमिक ने अपने शपथ पत्र में यह बताया है कि उस की प्रथम नियुक्ति अक्टूबर 1983 में अप्रार्थी सं. 1 द्वारा अप्रार्थी सं. 2 के अधीन की गई थी तथा वहां 86 दिन काम करने के पश्चात् फरवरी 1986 में उसे जोधपुर भेजा गया जहां उसने 204 दिन काम किया था व तत्पश्चात् उसे पुनः अजमेर कार्य करने के लिए बुलाया गया । इसके विपरीत अप्रार्थी सं. 2 की ओर से श्री चन्द्र मोहन भाटिया ने अपने बयान में यह बताया है कि श्रमिक की नियुक्ति उसके अधीन नियोजन कार्यालय के माध्यम से तीन माह के लिए मस्टररोल पर की गई थी व कार्य समाप्त होने पर 13-9-84 को उसकी सेवाएं समाप्त की गई तथा उसने मात्र 86 दिन उसके अधीन काम किया था । जोधपुर श्रमिक को भेजने के तथ्य को उन्होंने अस्वीकार किया है व यह भी कहा है कि नियमानुसार ने यह कार्यवाही करने के लिए सक्षम ही नहीं थे। दोनों पक्षों की साक्ष्य से यह मान्य स्थिति है कि अप्रार्थी सं. 2 के अधीन श्रमिक ने मात्र 86 दिन काम किया था । 13-2-84 को सेवाएं समाप्त करने का विवाद श्रमिक द्वारा प्रस्तुत नहीं किया गया है इसलिए यदि यह प्रमाणित हो कि 13-2-84 के पश्चात् श्रमिक जोधपुर कार्य करने या अन्य प्रकार से सेवा छोड़कर चला गया तो 13-2-84 के पश्चात् उसकी सेवाएं इस विवाद को अधिनिर्णय करने के लिए विचार में नहीं ली जा सकती । जोधपुर कार्यालय को पक्षकार नहीं बनाया गया है व इसके अलावा बहस में यह नहीं कहा गया है दोनों कार्यालय किसी प्रकार प्रशासनिक रूप से एक दूसरे से संबंधित हैं अथवा अजमेर कार्यालय के अधीन जोधपुर कार्यालय प्रशासनिक रूप से कार्यरत है। श्रमिक ने अपनी जिरह में यह बताया है कि जोधपुर उसे श्री शिव चरण शर्मा द्वारा भेजा गया था परन्तु लिखित में कोई आदेश नहीं दिया । उसका यह भी कथन है कि शिव चरण शर्मा ने यह कहा था कि जोधपुर काम चल रहा है इसलिए वहां चला गया । इस वाक्य से यह अर्थ सामान्यतः निकलता है कि श्रमिक की सेवाएं अजमेर में संविदा के तहत कार्य समाप्त होने पर समाप्त की गई थी तथा वह स्वेच्छा से जोधपुर कार्य करने के लिए गया था न कि उसे स्थानान्तरित करके वहां भेजा गया था । इसलिए जोधपुर कार्यालय के अधीन जिस अवधि में श्रमिक ने अपनी सेवाएं दी वे विपक्षगण सं. 1 व 2 के अधीन की गई सेवाओं की अवधि में शामिल नहीं किया जा सकता । जोधपुर से अजमेर पुनः स्थानान्तरित करने की जो बात क्लेम में श्रमिक ने कहीं है वह भी इसलिए मानने योग्य नहीं है क्योंकि दोनों कार्यालय प्रशासनिक रूप से अलग अलग हैं, कोई लिखित आदेश श्रमिक ने जोधपुर से अजमेर भेजने के संबंध में प्रस्तुत नहीं किया है व ऐसा कोई नियम भी नहीं बताया है कि जिसके यह साबित हो कि इस प्रकार की कार्यवाही नियमानुसार की जा सकती हो। श्री हरि शंकर गुप्ता ने अपनी जिरह में भी यह कहा है कि श्रमिक को फरवरी 1984 में किसी के आदेश से जोधपुर नहीं भेजा गया था बल्कि अजमेर में काम समाप्त होने पर उसकर सेवाएं समाप्त की थी व जोधपुर में जहां भी व जितने समय के लिए श्रमिक ने कार्य किया था वह अवधि अप्रार्थीगण 1 व 2 के यहां की गई सेवा अवधि में शामिल नहीं की जा सकती ।

7. श्रमिक ने अपने क्लेम के समर्थन में शपथ पत्र में यह बताया है कि अप्रार्थी सं. 2 के अधीन उसने जोधपुर से आने के पश्चात् 30-12-84 तक कार्य किया था व उसके पश्चात् उसकी सेवाएं समाप्त की गई थी। अजमेर वापस आना या नये सिरे से नियुक्ति होने की कोई तिथि श्रमिक ने शपथपत्र में नहीं बताई है। इसके अलावा प्रदर्श डब्ल्यू-1 से डब्ल्यू-3 प्रलेख इसके समर्थन में श्रमिक ने प्रस्तुत किये हैं। प्रदर्श डब्ल्यू-1 से डब्ल्यू-2 प्रलेख जोधपुर व अजमेर दूर संचार विभाग द्वारा उपस्थिति बाबत जारी किये गये प्रमाण पत्रों की तत्व प्रतिलिपि है। प्रदर्श डब्ल्यू-1 प्रमाण पत्र 86 दिन काम करने का प्रमाण पत्र है जो विपक्षी सं. 2 द्वारा जारी किया गया है। इसी प्रकार 204 दिन सहायक अभियन्ता टेलाकोम प्रोजेक्ट जोधपुर के अधीन श्रमिक द्वारा काम करने के संबंध में जारी किया हुआ प्रमाण पत्र है। पूर्व में जिन तथ्यों पर विचार किया है उन्हें देखते हुए इन दोनों प्रलेख के विवाद के संबंध में कोई भी सुसंगतता नहीं है। प्रदर्श डब्ल्यू-3 प्रमाण पत्र सब डिवीजनल आफिसर (फोन्स) अजमेर द्वारा जारी किया गया है जिसके अनुसार श्रमिक ने उनके अधीन 1-11-84 से दिसम्बर 1984 तक कुल 82 दिन काम किया था। विपक्षी सं. 1 की ओर से श्री हरी शंकर गुप्ता के शपथ पत्र में यह बताया गया है कि श्रमिक को मस्टररोल के जरिये 1-11-84 से नियोजित किया गया था व उसमें 21 12 84 तक काम किया था व उसके पश्चात् वह स्वेच्छा से काम पर नहीं आया। इस प्रकार इस गवाह की साक्ष्य से भी यह साबित होता है कि उक्त अवधि में भी श्रमिक ने 42 दिन उनके अधीन काम किया था। दोनों गवाहान की साक्ष्य पर जो जिरह की गई है उस पर भी इससे संबंधित कोई महत्वपूर्ण तथ्य प्रकट नहीं हुआ है इसलिए उपलब्ध साक्ष्य से यह विनिश्चय किया जाता है कि श्रमिक ने कथित सेवा मुक्ति से पूर्व अप्रार्थी सं. 1 के अधीन मात्र 42 दिन कार्य किया।

8. विवाद की प्रकृति को देखते हुए अगला विचारणीय बिन्दु यह है कि क्या श्रमिक ने 22-12-84 से विपक्षी सं. 1 के अधीन स्वेच्छा से कार्य करना बंद किया अथवा अप्रार्थी सं. 1 द्वारा उसकी सेवाएं समाप्त की गई। श्रमिक ने अपने शपथ पत्र में अप्रार्थी सं. 1 द्वारा सेवाएं समाप्त करने के तथ्य की पुनरावृत्ति की है या इस संबंध में कोई भी जिरह उससे नहीं की गई है। यह भी मान्य स्थिति है कि नियोजक द्वारा कथित सेवा मुक्ति सेवा के परित्याग के पश्चात् कोई भी नोटिस नियोजक द्वारा नहीं दिया गया व न ही मस्टररोल में किसी प्रकार का कोई उल्लेख किया गया है। अप्रार्थी सं. 1 के गवाह श्री गुप्ता ने अपने शपथ पत्र में यह कहा है कि श्रमिक ने स्वेच्छा से काम पर आना बंद कर दिया था व चूंकि उनके पास कार्य उपलब्ध था इसलिए श्रमिक की सेवाएं समाप्त करने का कोई भी कारण नहीं था। जिरह में भी उन्होंने इसी तथ्य का उल्लेख किया है इसके अलावा यह बताया गया है कि जनवरी 1985 से मस्टररोल में श्रमिक का नाम दर्ज नहीं किया गया क्योंकि वह काम पर नहीं आया यह भी बताया गया है कि श्रमिक को कथित अनुपस्थिति के पश्चात् कोई नोटिस भी नहीं दिया गया। इस प्रकार श्रमिक द्वारा सेवा छोड़ने या उसकी सेवाएं समाप्त करने के बिन्दु पर दोनों गवाहान के शपथ पर साक्ष्य के अलावा कोई भी प्रलेख उपलब्ध नहीं है। चूंकि श्रमिक से उसकी साक्ष्य पर कोई भी जिरह नहीं की गई है इस लिए उसके कथन पर अविश्वास करने का कोई भी कारण नहीं हो सकता। नियोजक के यहां श्रमिक द्वारा सेवा का परित्याग करने का कोई भी प्रलेख तैयार नहीं किया गया है। एक परिस्थिति नियोजक की ओर से यह बताई गई है कि श्रमिक ने समझौता अधिकारी के समक्ष अपना विवाद कराब 4 वर्ष से भी अधिक समय के पश्चात् प्रस्तुत किया था इसलिए यह धारणा लेने का आधार है कि वह स्वेच्छा से सेवा छोड़कर गया था। इस तर्क को इसलिए स्वीकार करने का आधार नहीं है क्योंकि इस संबंध में श्रमिक से कोई जिरह नहीं की गई है अन्यथा वह इस बात का स्पष्टीकरण देने का प्रयास कर सकता था कि किन परिस्थितियों में उसके द्वारा अपना विवाद समझौता अधिकारी के समक्ष देरी से उठाया गया। कानून की अज्ञानता या अन्य किसी कारणवश इस प्रकार की देरी हो सकती है किन्तु जब तक इस संबंध में प्रति परीक्षण नहीं किया जावे तब तक नियोजक को देरी का लाभ नहीं मिल सकता। तथ्यों व परिस्थितियों के विवेचन का निष्कर्ष यह है कि 22-12-84 से श्रमिक की सेवाएं अप्रार्थी सं. 1 द्वारा समाप्त करने का तथ्य साबित होता है।

9. दोनों पक्षों के अभिवचन व मौखिक साक्ष्य में यह स्थिति है कि श्रमिक की सेवा मुक्ति से पूर्व धारा 25-एफ, जी व एच के प्रावधान की पालना अप्रार्थी सं. 1 द्वारा नहीं की गई थी। धारा 25-एफ के प्रावधान इसलिए लागू नहीं होते हैं क्योंकि मान्य रूप से श्रमिक ने सेवा मुक्ति की तिथि से पूर्व अप्रार्थी सं. 1 के अधीन मात्र 42 दिन काम किया था।

10. श्रमिक के विद्वान प्रतिनिधि ने माननीय राजस्थान उच्च न्यायालय द्वारा एकल पीठ सिविल रिट याचिका सं. 755/89 के निर्णय दिनांक 22-12-92 की फोटो प्रति प्रस्तुत की है व इसके अलावा आर.एल. आर. 1991 (2) 691 सूर्य प्रकाश शर्मा बनाम राजस्थान टैक्सट बोर्ड जयपुर का निर्णय संदर्भित किया है जिसमें यह प्रतिपादित किया गया है कि नियम 77 व 78 के प्रावधान धारा 25—एफ के प्रावधान से पूर्ण रूप से स्वतंत्र हैं व यदि किसी श्रमिक की सेवाएं 240 दिन की अवधि के पूर्व भी इन प्रावधानों की पालना के बिना समाप्त की जाती हैं तो उस आदेश को वैधानिक नहीं माना जा सकता। अप्रार्थी सं. 1 के गवाह श्री हरी शंकर गुप्ता ने शपथ पत्र के मूल बयान में व जिरह में यह स्वीकार किया है कि जिस समय कथित रूप से श्रमिक की सेवाएं समाप्त की गई उस समय उनके पास काम उपलब्ध था, कथित सेवा मुक्ति से पूर्व कोई वरिष्ठता सूची नहीं बनाई गई श्रमिक की सेवा मुक्ति के पश्चात् अन्य लोगों को भी काम पर रखा गया था। श्रमिक ने अपने शपथ पत्र में पद सं. 14 में यह बताया है कि उसकी सेवाएं समाप्त करने के पश्चात् उससे कनिष्ठ कर्मचारीगण अब्दुल वहीद व पांचू सिंह कार्यरत थे जो वर्तमान में भी वहां कार्यरत हैं। उसके शपथ पत्र में यह भी आया है कि उसकी सेवा मुक्ति के पश्चात् अन्य लोगों की भी सेवा में रखा गया था। इस मौखिक साक्ष्य से यह प्रमाणित होता है कि श्रमिक की सेवा मुक्ति के पश्चात् इसी कार्य पर अन्य लोगों को सेवा में लिया गया था श्रमिक की सेवा मुक्ति के समय उससे कनिष्ठ अभिकागण भी कार्यरत थे। अतः यह माना जाता है कि श्रमिक की सेवा मुक्ति के मामले में नियोजक द्वारा नियम 77 व 78 अधिठित धारा 25-जी व एच के प्रावधान की अवहेलना की गई व इस कारण सेवा मुक्ति के आदेश को पुष्ट नहीं किया जा सकता।

11. श्रमिक ने अपने शपथ पत्र के पद सं. 10 में यह बताया है कि सेवा मुक्ति की तिथि से वह बेरोजगार है व उसके पास जीविका का कोई साधन नहीं है। इस तथ्य को नियोजक द्वारा जिरह में किसी भी रूप में चुनौती नहीं दी गई है। अप्रार्थी सं. 1 व 2 की ओर से साक्ष्य में जो शपथ पत्र प्रस्तुत हैं उसमें भी इस तथ्य का खण्डन करने का प्रयास नहीं किया गया है। ऐसी स्थिति में श्रमिक पुनः सेवा में आने की स्थिति में समस्त बकाया वेतन व अन्य लाभ प्राप्त करने का अधिकारी है।

12. प्रकरण में एक स्थिति यह आई है कि 1994 के दिसम्बर में सेवा मुक्ति के पश्चात् 1989 के प्रारंभ में श्रमिक ने अपना विवाद समझौता अधिकारी के समक्ष प्रस्तुत किया था। संवैधानिक रूप से विवाद के अधिनिर्णय में जो विलम्ब हुआ है उसमें श्रमिक का भी योगदान है व ऐसी स्थिति में उस अवधि का बकाया वेतन श्रमिक को दिलाया जाना किसी प्रकार न्यायसंगत नहीं होगा।

13. निर्देशित विवाद का अधिनिर्णय इस प्रकार किया जाता है कि श्रमिक मोहम्मद इस्माईल के खिलाफ अप्रार्थी सं. 1 द्वारा दिनांक 30-12-84 को पारित सेवा मुक्ति का आदेश अनुचित व अवैध है व परिणामस्वरूप श्रमिक पुनः सेवा में आने का, सेवा का निरन्तर बनाये रखने का मई 1989 से पुनः सेवा में आने की तिथि तक का समस्त पिछला वेतन व अन्य लाभ प्राप्त करने का अधिकारी है।

14. अधिनिर्णय आज दिनांक 30-5-95 को लिखाया जाकर सुनाया गया जो केन्द्र सरकार को प्रकाशनार्थ नियमानुसार भेजा जाये।

के. एल. व्यास, न्यायाधीश

नई दिल्ली, 17 जनवरी, 1996

का.आ. 357—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार टेलीकॉम के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, जयपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-1-96 को प्राप्त हुआ था।

[संख्या एल-40012/3/89-डी 2 (बी)]

के. वि. बी. उन्नी, डैस्क अधिकारी

New Delhi, the 17th January, 1996

S.O. 357.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Jaipur as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of Telecom and their workmen, which was received by the Central Government on 16-1-96.

[No. L-40012/3/89-D.2 (B)]

K. V. B. UNNY, Desk Officer

अनुबंध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं. सी.आई.टी. 118/1989

रेफरेंस : केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश क्रमांक एल-40012/3/89 डी 2 (बी) दिनांक 3-11-89

बनवारीलाल स्वीपर पुत्र श्री गुलालाल द्वारा बी.एम. बागड़ा, चांदपोल बाजार, जयपुर।

—प्रार्थी

बनाम

महाप्रबन्धक, दूर संचार, जयपुर।

—अप्रार्थी

उपस्थित

माननीय न्यायाधीश श्री के.एल. व्यास, आर.एच.जे.एस.

प्रार्थी की ओर से : श्री बी.एम. बागड़ा
अप्रार्थी की ओर से : श्री वी.एस. गुर्जर
दिनांक अवार्ड : 2-6-1995

अवार्ड

केन्द्र सरकार द्वारा निम्न विवाद अधिनिर्णय हेतु निर्देशित किया गया है :

"Whether the action of the management of Genetal Manager, Telecom. Deptt. Jaipur in terminating the services of Shri Barwarilal, Sweeper, w.e.f. 1-12-87 is just and legal? If not, to what relief is the worker concerned is entitled and from what date?

2. श्रमिक द्वारा प्रस्तुत क्लेम में यह अभिकथित किया गया है कि उसने विपक्षी महाप्रबन्धक दूर संचार, जयपुर के अधीन 1-11-85 से 30-11-87 तक स्वीपर के पद पर कार्य किया था व 1-12-87 से उसकी सेवाएं समाप्त की गई तथा सेवा समाप्ति से पूर्व धारा 25एफ, जी व एच औद्योगिक विवाद अधिनियम 1947 (जिसे बाद में अधिनियम संबोधित किया जायेगा) की पालना नियोजक द्वारा नहीं की गई। सेवा मुक्ति के पश्चात् श्रमिक ने नियोजक को नौकरी में पुनः लेने के लिए निवेदन किया परन्तु उन्होंने कोई कार्यवाही नहीं की व परिणामस्वरूप समझौता अधिकारी के समक्ष विवाद प्रस्तुत किया गया व असफल समझौता वार्ता के कारण यह विवाद निर्देशित किया गया है। अतुतोष यह मांगा गया है कि 1-12-87 से निरन्तर सेवा में मानते हुए श्रमिक को पुनः सेवा में बहाल करने का व बकाया वेतन व अन्य आर्थिक परिलाभ स्वीकृत किया जावे। नियोजक ने अपने जवाब में यह बताया है कि नवम्बर 1985 में कुल 11 दिन श्रमिक ने कार्य किया था व उसके पश्चात नियोजक कार्यालय द्वारा उसका नाम प्रायोजित नहीं होने के कारण उसे सेवा से हटाया गया। जनवरी 1986 में उसे पुनः सेवा में लिया गया क्योंकि श्रमिक ने यह आश्वासन दिया था कि वह नियोजक कार्यालय में अपने कारनामे प्रस्तुत कर देगा। मई 1986 तक श्रमिक ने इसी रूप में कार्य किया व फिर उसे सेवा से हटा दिया गया तथा बाद में जून व जुलाई 1986 में वह स्वयं अनुपस्थित रहा तथा बाद में अगस्त 1986, नवम्बर 1987 में उसने कार्य किया था व इस बीच मार्च व अगस्त 1987 को छोड़कर हर माह कुछ दिनों के लिए अनुपस्थित रहा। दिसम्बर 1987 से सेवा समाप्त करने के तथ्य को नियोजक ने अस्वीकार किया है यह प्रतिरक्षा ली है कि श्रमिक से नियोजन कार्यालय के कागज मांगे गये तथा इस पर वह बिना सूचना के सेवा छोड़कर चला गया। धारा 25एफ के प्रावधान की पालना नहीं करना नियोजक द्वारा स्वीकार किया गया है। वर्ष 1986 में 221 दिन व 87 में श्रमिक द्वारा 210 दिन कार्य करना जवाब में स्वीकार किया गया है। इन तथ्यों के आधार पर यह भी कहा गया है कि श्रमिक ने एक कलैंडर वर्ष में 240 दिन कार्य नहीं किया इसलिए वह धारा 25एफ के व 25एच अधिनियम के प्रावधान प्रस्तुत प्रकरण में लागू नहीं होना जवाब में बताया गया है।

3. मौखिक साक्ष्य में श्रमिक की ओर से उसका स्वयं का व नियोजक की ओर से एक गवाह श्री बी. डी. भगत का शपथ पत्र प्रस्तुत किया गया है। कुछ प्रलेख दोनों पक्षों की ओर से प्रस्तुत किये गये हैं। बहस सुनी गई व उपलब्ध मौखिक व प्रालेखीय साक्ष्य तथा संबंधित विधिक स्थिति पर विचार किया गया।

4. श्रमिक के विद्वान प्रतिनिधि ने बहस में इस प्रकरण में धारा 25जी व 25एच के प्रावधान की पालना के संबंध में क्लेम में उठाई गई आपत्तियों को किसी प्रकार प्रेरित नहीं किया है इसलिए इस संबंध में तथ्यों व विधिक स्थिति पर विचार करने की कोई भी आवश्यकता नहीं है। दोनों पक्षों के अभिकथनों को देखते हुए तथ्यात्मक रूप से सर्व प्रथम यह विनिश्चय किया जाना है कि क्या श्रमिक ने कथित सेवा मुक्ति से पूर्व निरन्तर 240 दिन नियोजक के यहां कार्य किया व दूसरा यह कि क्या श्रमिक द्वारा स्वयं सेवा से परित्याग किया गया अथवा उसे सेवा से हटाया गया।

5. श्रमिक ने अपने शपथ पत्र में 18-11-85 से 30-11-87 तक नियोजक के यहां निरन्तर कार्य करना बताया है व इस संबंध में विभाग द्वारा जारी प्रमाण पत्र प्रदर्श डब्ल्यू 1 प्रस्तुत किया है। इस प्रमाणपत्र के अनुसार नवम्बर 1985 से नवम्बर 1987 की अवधि में श्रमिक ने कुल 463 दिन कार्य किया था व 39 दिन रविवारीय अवकाश के बताये गये हैं इस प्रकार कुल कार्य दिवस 502 बताये गये हैं। यह प्रमाण पत्र स्वयं विपक्षी विभाग का जारी किया हुआ है व उसको किसी भी प्रकार साक्ष्य व बहस में विवादास्पद नहीं बताया गया है। श्रमिक ने शपथ पत्र में यह भी कहा है कि केन्द्रीय सरकार में हर शनिवार अवकाश होता है लेकिन उस रोज भी उससे सफाई का काम लिया जाता था व इस संबंध में उसने विभाग द्वारा स्वयं के नाम संबोधित प्रदर्श डब्ल्यू 2 प्रस्तुत किया है। इस प्रकार शनिवार के अवकाश को

जोड़ने से कार्य दिवस की सं. 502 से अधिक होती है। प्रदर्श डब्ल्यू 2 में भी विपक्षी की ओर से कोई आपत्ति नहीं ली गई है। जो जिरह श्रमिक से की गई उसमें उक्त अवधि में किये गये कार्य के संबंध में कोई भी प्रश्न श्रमिक से नहीं पूछा गया है। नियोजक की ओर से जो गवाह श्री बी.डी. भगत प्रस्तुत हुए हैं उन्होंने नवम्बर 1985 में 11 दिन श्रमिक द्वारा कार्य करना स्वीकार किया है व यह कहा गया है कि 1986 में श्रमिक ने नियोजन कार्यालय से कागजात प्रस्तुत करने का आश्वासन दिया था इसलिए उसे पुनः अंशकालीन कर्मचारी के रूप में रखा गया तथा मई 1986 तक उसने कार्य किया व उसके बाद से सेवा से हटाया गया। इसके पश्चात अगस्त 1986 से नवम्बर 1987 तक उसने काम किया था, ऐसा स्वयं गवाह ने स्वीकार किया है। जिरह में उन्होंने यह बताया है कि श्रमिक ने कुल अवधि 18-11-85 से 30-11-87 तक काम किया था व जितने दिन उसने कार्य किया था व जितने दिन उसने कार्य किया उसका विवरण विभाग द्वारा न्यायाधिकरण में प्रस्तुत किया गया है व उपस्थिति रजिस्टर भी तैयार किया गया था। नवम्बर 1985 के उपस्थिति रजिस्टर की प्रतिलिपि प्रदर्श एम 1 व अगस्त 1987 तक के बकाया रजिस्टर की प्रतिलिपि प्रदर्श एम 2 से एम 19 जिरह में गवाह द्वारा प्रस्तुत किये गये हैं। प्रदर्श एम 1 से प्रदर्श एम 19 उपस्थिति रजिस्टर जो विभाग द्वारा प्रस्तुत किया गया है व इसके अलावा प्रदर्श एम 20 जो विवरण प्रस्तुत किया गया है उससे यह प्रमाणित होता है कि श्रमिक ने मई 1986 के पश्चात भी लगातार 240 दिन से अधिक कार्य नियोजक के यहां किया था। कथित सेवा मुक्ति से पूर्व यदि एक वर्ष की अवधि को भी विचार में लिया जावे तो भी यह प्रदर्श एम-20 से स्पष्ट है कि श्रमिक ने दिसम्बर 1986 से नवम्बर 1987 के बीच 240 दिन से अधिक नियोजक के यहां कार्य किया था। मई 1986 में श्रमिक की सेवाएं समाप्त करने की प्रतिरक्षा नियोजक द्वारा जवाब में ली गई है जिस पर बाद में विचार किया जायेगा। नियोजक के विद्वान प्रतिनिधि ने बहस में इस तथ्य को सही रूप से स्वीकार किया है कि श्रमिक ने मई 1986 के पश्चात तथा दिसम्बर 1987 तक लगातार 240 दिन नियोजक के रिकार्ड के अनुसार कार्य किया है व इसलिए इस तथ्य पर उनके द्वारा कोई भी आपत्ति नहीं की गई है। इस स्थिति में यदि यह प्रमाणित हो कि श्रमिक सेवाएं विभाग द्वारा समाप्त की गई थी तो निश्चित रूप से धारा 25-एफ के प्रावधान प्रभाव में आते हैं।

5. मई 1986 का उपस्थिति रजिस्टर प्रदर्श एम-6 है। इसमें श्रमिक की उपस्थिति 7 तारीख तक दर्ज है व उसके पश्चात उसके नाम के आगे "क्रॉस" का चिन्ह लगाया हुआ है व 26 से 31 तारीख के बीच "रिमूव्ड" शब्द लिखा हुआ है। नियोजक के विद्वान प्रतिनिधि का कथन है कि मई 1986 में श्रमिक की सेवाएं नियोजक कार्यालय के कागजात उसके द्वारा प्रस्तुत नहीं करने से समाप्त की गई थी। नियोजक का यह कथन उपलब्ध साक्ष्य व रिकार्ड को देखते हुए स्वीकार्य नहीं है क्योंकि जिस अधिकारी/कर्मचारी द्वारा मई 1986 के उपस्थिति रजिस्टर में "रिमूव्ड" शब्द लिखा हुआ है वह साक्ष्य में प्रस्तुत नहीं हुआ है व इसके अलावा ऐसी कोई मौखिक या अभिलेखीय साक्ष्य प्रस्तुत नहीं हुई है जिससे यह माना जावे कि श्रमिक के पास नियोजन कार्यालय के कागजात नहीं थे इसलिए उसे सेवा मुक्त किया गया था। श्रमिक ने अपने बयान में मई 1986 में की गई सेवा मुक्ति को स्वीकार नहीं किया है। यदि तर्क के लिए यह माना जावे कि मई 1986 में श्रमिक की सेवाएं समाप्त की गई थी तो भी इस विवाद के अधिनिर्णय हेतु इसका कोई भी महत्वपूर्ण प्रभाव नहीं होता क्योंकि अगस्त 1986 के पश्चात् भी श्रमिक ने लगातार मान्य रूप से 240 दिन से अधिक नियोजक के यहां कार्य किया।

6. श्रमिक ने अपने शपथ पत्र में यह बताया है कि 1-12-87 से नियोजक ने उसे काम पर लेने से मना कर दिया था व उसी के परिणामस्वरूप उसने समझौता अधिकारी के समक्ष अपना विवाद प्रस्तुत किया था। असफल वार्ता का प्रतिवेदन प्रदर्श डब्ल्यू-3 है। श्रमिक की इस मौखिक साक्ष्य पर कोई भी जिरह नहीं है इसलिए विधिक रूप से उसकी साक्ष्य को विश्वास नहीं करने का कोई भी आधार नहीं बनता। नियोजक के विद्वान प्रतिनिधि ने भी इस संबंध में कोई भी तर्क प्रस्तुत नहीं किया है। मात्र कुछ प्रश्न नियोजन कार्यालय का कार्ड मांगने बाबत श्रमिक से पूछे गये हैं। जवाब में नियोजक द्वारा यह प्रतिरक्षा ली गई है कि श्रमिक से नियोजन कार्यालय का कार्ड मांगा व इसलिए वह स्वेच्छा से काम पर आना बंद हो गया। श्रमिक ने अपनी जिरह में यह कहा है कि उससे कोई भी कार्ड नहीं मांगा गया वह यह भी मना किया है कि कार्ड के अभाव में उसने काम पर आना बंद कर दिया। मुख्य बयान में श्रमिक ने यह कहा है कि उसका नाम नियोजन कार्यालय में पंजीबद्ध कराया हुआ था व इस बाबत उससे कोई विवरण जिरह में नहीं पूछा गया है। बहस के पश्चात श्रमिक के विद्वान प्रतिनिधि ने नियोजन कार्यालय के कार्ड की फोटो प्रति बिना किसी प्रार्थना पत्र के प्रस्तुत की है जिसे साक्ष्य में नहीं पढ़ा जा सकता क्योंकि न तो उसे विधिवत प्रदर्शित करवाया गया है व न ही इसकी प्रतिलिपि विपक्षी प्रतिनिधि को दी गई है। इसके अभाव में भी नियोजक पक्ष की प्रति रक्षा जो नियोजन कार्यालय के रिकार्ड के संबंध में प्रस्तुत की गई है वह स्वीकार्य नहीं है।

7. नियोजक के गवाह श्री बी.डी. भगत ने शपथ पत्र में यह बताया है कि श्रमिक से नियोजन कार्यालय का कार्ड नवम्बर 1987 में मांगा गया किन्तु उसने यह कागज पेश नहीं किया व बाद के कार्य करने के लिए उपस्थित नहीं हुआ। नियोजक के विद्वान प्रतिनिधि ने इस साक्ष्य से यह धारणा लेने का तर्क दिया है कि श्रमिक ने स्वयं ही कार्य पर आना बंद कर दिया था अर्थात् स्वेच्छा से सेवा का परित्याग कर दिया था। उपलब्ध साक्ष्य से इस तर्क को स्वीकार नहीं किया जा सकता। श्री भगत की जिरह से यह स्पष्ट है कि वे संबंधित समय जयपुर कार्यालय में पदस्थापित नहीं थे व उन्होंने यह भी स्वीकार किया है कि श्रमिक ने कभी भी उनके अधीन कार्य नहीं किया। श्रमिक से संबंधित कोई भी अभिलेख इस गवाह द्वारा तैयार नहीं किया गया है। उन्होंने जिरह में यह भी कहा है कि जो भी बयान उन्होंने दिया है वह रिकार्ड के आधार पर दिया है। उन्होंने जो श्रमिक द्वारा स्वयं सेवा छोड़कर जाने का तथ्य बताया है उसकी पुष्टि अन्य किसी मौखिक साक्ष्य से या अभिलेख से नहीं होती है। संबंधित समय का कोई भी अधिकारी या कर्मचारी साक्ष्य में प्रस्तुत नहीं हुआ है जिससे इस प्रकरण की व्यक्तिगत जानकारी हो। नियोजन कार्यालय का कार्ड श्रमिक से कभी भी मांगा गया हो इस बाबत कोई नोटिस या पत्र नियोजक द्वारा प्रस्तुत नहीं किया गया है। इसके अलावा भी यह किसी भी रूप में संवैधानिक या मान्य नहीं लगता कि लगातार दो वर्ष काम करने के पश्चात श्रमिक नियोजन कार्यालय के कार्ड के अभाव में स्वयं ही नौकरी छोड़कर चला गया हो। प्रदर्श एम–21 नवम्बर 1987 का उपस्थिति रजिस्टर है जिसमें श्रमिक की उपस्थिति 13 तारीख तक दर्ज है व उसके पश्चात उसे अनुपस्थित बताया हुआ है। अवकाश के दिनों को छोड़कर उस माह में 8 दिन श्रमिक को उपस्थित होना बताया गया है। इसके अलावा इस उपस्थिति रजिस्टर में कहीं भी यह नोट दर्ज नहीं है कि श्रमिक ने स्वेच्छा से काम पर आना बंद कर दिया हो। जिस अधिकारी या कर्मचारी को श्रमिक ने काम पर आने से मना किया हो उसे साक्ष्य में प्रस्तुत नहीं किया गया है। लगातार 15–20 रोज अनुपस्थित रहने से यह विधिक धारणा नहीं ली जा सकती कि श्रमिक ने सम्प्राप्य सेवा का परित्याग कर दिया था। मान्य रूप से दिसम्बर 1987 की उपस्थिति रजिस्टर में श्रमिक का नाम नियोजक द्वारा दर्ज नहीं किया गया था। यदि अनुपस्थिति के कारण श्रमिक का नाम सेवा से हटाया जावे तो उसके लिए आवश्यक कार्यवाही नियमानुसार किया जाना आवश्यक है किन्तु इस संबंध में मामले में ऐसा नहीं किया गया है व नियोजक की यह प्रतिरक्षा भी नहीं है कि लगातार अनुपस्थिति के कारण श्रमिक का नाम उपस्थिति रजिस्टर से काटा गया था।

8. श्रमिक ने अपने शपथ पत्र में यह बताया है कि सेवा मुक्ति के पश्चात् उसने विभाग को पुनः सेवा में लेने के लिए अनुरोध किया

था व इस तथ्य को खण्डित करने के लिए कोई भी साक्ष्य नियोजक द्वारा प्रस्तुत नहीं की गई है। समझौता अधिकारी के समक्ष श्रमिक द्वारा अपना विवाद अनावश्यक विलम्ब से प्रस्तुत नहीं किया गया था जैसा कि प्रदर्श डब्ल्यू-3 प्रतिवेदन से स्पष्ट होता है जो असफल वार्ता का प्रतिवेदन दिनांक 29-12-89 का है। श्रमिक से जिरह में इस संबंध में कोई प्रश्न नहीं पूछा गया है कि उसने मौखिक रूप से नियोजक के किस अधिकारी को पुनः सेवा में लेने के लिए अनुरोध किया व यह भी नहीं पूछा गया है कि उसके द्वारा समझौता अधिकारी के समक्ष अपना विवाद करीब 6-8 माह के विलम्ब से किसलिए प्रस्तुत किया गया। अन्य कोई भी साक्ष्य या परिस्थिति दोनों पक्षों की ओर से विवादित बिन्दु के लिए प्रस्तुत नहीं की गई है। समस्त उपलब्ध मौखिक अभिलेख व साक्ष्य एवं सुसंगत परिस्थितियों के विवेचन से यह माना जाता है कि नवम्बर 1987 के पश्चात् नियोजक द्वारा श्रमिक की सेवाएं समाप्त की गई थीं।

9. श्रमिक के विद्वान प्रतिनिधि ने ए.आई.आर. 1982 (एस.सी.) 854 रॉबर्ट डिसूजा बनाम अधिशासी अभियन्ता दक्षिण रेलवे व 1995 लैब.आई.सी. (केरल) 37, पी.एम. अनिथा बनाम सहायक निदेशक टी डेवलपमेंट बोर्ड के निर्णय प्रस्तुत किये गये है जिनमे यह प्रतिपादित किया गया है कि यदि किसी कारण श्रमिक का नाम उपस्थिति रजिस्टर से काटा जावे व उसके द्वारा लगातार 240 दिन काम करने का तथ्य साबित हो तो उस स्थिति में नियोजक द्वारा धारा 25-एफ के प्रावधान की पालना किया जाना आज्ञापक है। इस प्रकरण में यह मान्य स्थिति है कि नियोजक द्वारा श्रमिक की सेवा मुक्ति से पूर्व धारा 25-एफ के प्रावधान की पालना किसी भी रूप में नहीं की गई। इस बाबत नियोजक की ओर से कोई साक्ष्य प्रस्तुत नहीं की गई है व नियोजक के विद्वान प्रतिनिधि ने बहस में यह स्वीकार किया है कि धारा 25-एफ अधिनियम के प्रावधान की पालना विधिक रूप से विभाग ने नहीं की है। इस स्थिति में श्रमिक के खिलाफ पारित सेवा मुक्ति का आदेश वैध व उचित नहीं माना जा सकता।

10. श्रमिक ने अपने शपथ पक्ष में यह अभिकथित किया है कि नियोजक द्वारा सेवा से हटाने के पश्चात वह लगातार बेरोजगार है व उसने कहीं भी कार्य नहीं किया। इस बिन्दु पर कोई भी जिरह श्रमिक से नहीं की गई है। नियोजक की ओर से जवाब में इस संबंध में कोई प्रतिरक्षा नहीं ली गई है तथा नियोजक की ओर से जो गवाह भी प्रस्तुत हुए हैं उन्होंने भी श्रमिक के कथन का किसी प्रकार का खण्डन नहीं किया। ऐसी स्थिति में श्रमिक सेवा में बहाल होने की स्थिति में पिछला समस्त वेतन प्राप्त करने का अधिकारी है।

11. निर्देशित विवाद का अधिनिर्णय इस प्रकार किया जाता है कि श्रमिक बनवारी लाल के खिलाफ विपक्षी महाप्रबन्धक दूर संचार जयपुर द्वारा दिनांक 1-12-87 को पारित सेवा मुक्ति का आदेश अनुचित व अवैध है। श्रमिक इस स्थिति के परिणामस्वरूप पुनः सेवा में बहाल होने का सेवा की निरन्तरता बनाये रखने का व सेवा मुक्ति की तिथि से सेवा में पुनः आने की तिथि तक का समस्त पिछला बकाया वेतन व अन्य आर्थिक लाभ नियमानुसार प्राप्त करने का अधिकारी है।

12. अवार्ड आज दिनांक 2-6-95 को लिखाया जाकर सुनाया गया जो केन्द्र सरकार को प्रकाशनार्थ नियमानुसार भेजा जावे।

के.एल. व्यास, न्यायाधीश

नई दिल्ली, 17 जनवरी, 1996

का.आ. 358.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार टेलीग्राफ के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-1-96 को प्राप्त हुआ था।

[संख्या एल-40012/109/90-आईआर (डीयू)]

के. वि. बी. उन्नी, डैस्क अधिकारी

New Delhi, the 17th January, 1996

S.O. 358.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Jaipur as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of Telecom and their workmen, which was received by the Central Government on 16-1-96.

[No. L-40012/109/90-IR(DU)]

K. V. B. UNNY, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR (MP)

Case Ref. CGIT/LC(R)(11)/1991

BETWEEN

Shri Nandilal Kushwaha S/o. Shri Mohanlal, Gram : Bukaran, Post Mausaniya, District Chatarpur (MP)-471001.

AND

The Sub-Divisional Officer, Telegraph, Telecommunication Department, Chatarpur (MP)-471001.

PRESIDED IN : By Shri Arvind Kumar Awasthy.

APPEARANCES :

For Workman.—Shri Kamlesh Dutta, Advocate.

For Management.—Shri S. S. Jha, Advocate, Shri B. De' Silva, Advocate.

INDUSTRY : Telegraph DISTRICT : Chatarpur (MP).

AWARD

Dated, December, 29th 1995

This is a reference made by the Central Government, Ministry of Labour, vide its Notification No. L-40012/109/90-IR(DU) dated 23/31-1-1991, for adjudication of the following industrial dispute :—

THE SCHEDULE

"Whether the action of the management of S.D.O. Telegraph, Chhattarpur (M.P.) in terminating the services of Shri Nandilal Kushwaha w.e.f. January, 1990 is justified ? If not, what relief he is entitled to ?"

2. The case of the workman is that he was appointed as labour against muster roll with effect from 27th September, 1976 and he has worked for more than 240 days upto October, 1988. The workman has further alleged that the management has orally terminated the services of the workman; that the workman was ill and he could not attend the duty due to illness. The workman has alleged that his termination with effect from 1-1-1990 be declared illegal and the workman be reinstated with full back wages.

3. The case of the management is that the workman was employed on daily wages; that the workman was not retrenched, but he voluntarily stopped coming to the work. The management has alleged that the workman is not eligible for regularisation as he has voluntarily left the work.

4. The workman has not led any evidence to show that he was a permanent employee. The appointment order or any evidence to show that the workman was taken on service as a permanent employed, is also not filed; the workman has also not led any evidence to show that his absence from duty was on account of his illness and that the workman has not voluntarily stopped coming to work.

Consequently, the workman has failed to prove his case and he is not entitled for any relief whatsoever. Reference is answered in favour of the management. Parties to bear their own costs.

ARVIND KUMAR AWASTHY, Presiding Officer

नई दिल्ली, 17 जनवरी, 1996

का.आ. 359.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार टेलीकाम के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, जयपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-1-96 को प्राप्त हुआ था।

[संख्या एल-40012/89/90-आई आर (डीयू)]

के. वि. बी. उन्नी, डेस्क अधिकारी

New Delhi, the 17th January, 1996

S.O. 359.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Jaipur as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of Telecom and their workmen, which was received by the Central Government on 16-1-96.

[No. L-40012/89/90-IR(DU)]

K. V. B. UNNY, Desk Officer

अनुबन्ध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं. सी.आई.टी. 4/1991

रैफरैंस : केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश क्र. एल-40012/89/90 आई.आर. (डी.यू.) दि. 24-1-91

श्री अशोक कुमार पारीक आत्मज श्री मदनलाल जी
नि. मांडपुरा जिला भीलवाड़ा (राज.)

—प्रार्थी

बनाम

सब डिवीजनल ऑफीसर (टेलीग्राम्स) भीलवाड़ा (टेलीकॉम डिपार्टमेंट) भीलवाड़ा (राज.)

—अप्रार्थी

उपस्थित

माननीय न्यायाधीश श्री के.एस. व्यास, आर.एच.जे.एस.

प्रार्थी की ओर से : श्री कानसिंह राठौड़

अप्रार्थी की ओर से : कोई हाजिर नहीं

दिनांक अवार्ड : 1-5-95

अवार्ड

केन्द्र सरकार द्वारा निम्न विवाद अधिनिर्णय हेतु निर्देशित किया गया है :

"Whether the action of the Telecom Department in terminating the services of Shri Ashok Kumar pareek, S/o Shri Madanlal Ji, labourer w.e.f. from 1-3-84 is justified ? If not, to what relief is the workman entitled. ?"

2. श्रमिक ने अपने क्लेम में यह अभिकथित किया है कि कि उसने विपक्षी के यहां जनवरी 1982 से 1-3-84 तक लगातार आकस्मिक व दैनिक मजदूरी के रूप में कार्य किया था व 1-3-84 के पश्चात् बिना किसी नोटिस व बिना धारा 25-एफ, जी व एच औद्योगिक विवाद अधिनियम 1947 (जिसे तत्पश्चात् अधिनियम संबोधित किया गया है) की पालना किये उसकी सेवाएं नियोजक द्वारा समाप्त कर दी गई। अनुतोष यह मांगा गया है कि उक्त कार्यवाही को अवैध व अनुचित घोषित करते हुए श्रमिक को पुनः सेवा में नियोजित करने का आदेश दिया जाये।

3. नियोजक की ओर से जवाब में यह स्वीकार किया गया है कि प्रार्थी को नियोजक द्वारा अप्रैल 1962 से कार्य पर रखा गया था व उसने मई 1983 तक कार्य किया था व जून 1983 से वह बिना किसी सूचना के अनुपस्थित हो गया। इसके आगे यह बताया गया है कि जुलाई 1983 में श्रमिक पुनः मजदूरी पर आया व उसने नवम्बर 1983 तक कार्य किया। दिसम्बर 1983 में श्रमिक कार्य से अनुपस्थित हो गया व जनवरी 1984 में कुछ समय तक मस्टररोल के जरिये किया था। जनवरी 1984 के पश्चात् श्रमिक द्वारा कभी भी काम पर नहीं आने की प्रतिरक्षा नियोजक द्वारा ली गई है व इस कथन को गलत बताया गया है कि नियोजक द्वारा श्रमिक की सेवाएं समाप्त की गई थी। इन परिस्थितियों में यह भी बताया गया है कि नियोजक द्वारा धारा 25-एफ, जी, एच अधिनियम का पालन करना किसी भी रूप में आवश्यक नहीं था।

4. श्रमिक की ओर से मौखिक साक्ष्य में उसका स्वयं का शपथ पत्र प्रस्तुत किया गया है व खण्डन में नियोजक की ओर से एक गवाह श्री संजीव त्यागी प्रभारी अधिकारी का शपथ पत्र प्रस्तुत किया गया है। श्रमिक ने प्रालेखीय साक्ष्य के रूप में प्रदर्श डब्ल्यू-1 से प्रदर्श डब्ल्यू-5 प्रलेख प्रस्तुत किये हैं जिनमें प्रदर्श डब्ल्यू-1 व डब्ल्यू-2 नियोजक द्वारा जारी कार्य दिवस के बाबत प्रमाण पत्र हैं, प्रदर्श डब्ल्यू-3 असफल समझौता वार्ता का प्रतिवेदन है व प्रदर्श डब्ल्यू-4 व डब्ल्यू-5 विभागीय परिपत्र है। बहस के समय नियोजक पक्ष की ओर से कोई भी प्रतिनिधि उपस्थित नहीं हुआ। श्रमिक के विद्वान प्रतिनिधि की बहस सुनी गई व उपलब्ध मौखिक व प्रालेखीय साक्ष्य पर तथा प्रस्तुत विधि दृष्टान्तों पर विचार किया गया।

5. दोनों पक्षों के अभिकथन को देखते हुए सर्वप्रथम विचारणीय बिन्दु यह है कि क्या श्रमिक ने 1-3-84 से पूर्व लगातार 240 दिन तक नियोजक के यहां कार्य किया था। यदि यह तथ्यात्मक स्थिति श्रमिक के पक्ष में निर्णित होती है तो यह विनिश्चय किया जाना है कि क्या 1-3-84 के पश्चात् श्रमिक ने स्वयं स्वेच्छा से मजदूरी पर आना बंद किया अथवा नियोजक द्वारा उसे सेवा से हटाया गया।

6. श्रमिक ने अपने शपथ पत्र में यह बताया है कि उसकी नियुक्ति सर्वप्रथम मस्टररोल पर जनवरी 1989 में की गई थी व तब से उसने लगातार 1-3-84 तक कार्य किया था व उसके पश्चात् उसे सेवा में नहीं लिया गया। प्रदर्श डब्ल्यू-1 व प्रदर्श डब्ल्यू-2 प्रमाण पत्र श्रमिक ने प्रस्तुत किया है जो विभाग द्वारा जारी किया गया था। श्रमिक से जो इस संबंध में जिरह हुई है उसमें उसने इस तथ्य को गलत बताया है कि उसने नियोजक के यहां अप्रैल 1982 से मई 1983 तक ही कार्य किया था। इसके अलावा इस सुझाव को भी अस्वीकार किया है कि वह जून 1983 में पूरे माह व इसी प्रकार दिसम्बर 1983 में पूरे माह काम पर नहीं आया था। नियुक्ति तिथि से कथित सेवा मुक्ति की तिथि के बीच जो व्यवधान नियोजक ने बताया है उनके संबंध में बाद में विचार किया जायेगा व वर्तमान में यह देखना है कि प्रथम नियुक्ति से कथित सेवा मुक्ति की अवधि के बीच श्रमिक ने जितने दिन काम किया उसका योग 240 दिन होता है अथवा नहीं। इस संबंध में कोई भी महत्वपूर्ण जिरह नियोजक द्वारा श्रमिक से नहीं की गई है। प्रदर्श डब्ल्यू-1 प्रमाण पत्र जो विभाग द्वारा जारी किया गया है उसमें जनवरी 1982 से अक्टूबर 1983 तक प्रत्येक माह अलग-अलग कार्य दिवसों का विवरण दिया हुआ

है व उनका कुल योग 501 दिन बताया हुआ है। इस प्रकार प्रदर्श डब्ल्यू-2 प्रमाण पत्र जो विभाग द्वारा श्रमिक के कार्य दिवसों के संबंध में दिया गया है वह नवम्बर 1983 से फरवरी, 1984 की अवधि का है व उसमें कुल 54 कार्य दिवस बताये गये हैं। इन प्रमाण पत्रों के किसी भी रूप में विभाग ने गलत नहीं बताया है बल्कि उन्हीं के द्वारा जारी किए गये हैं। इन प्रमाण पत्रों से नियोजक का यह कथन गलत हो जाता है कि श्रमिक ने अप्रैल 1982 से कार्य करना प्रारंभ किया था। इसके अलावा यह भी स्पष्ट है कि जनवरी 1982 से फरवरी 1984 के बीच उसने कुल 555 दिन मस्टारोल के जरिये विभाग में मजदूरी की थी। नियोजक की ओर से जो गवाह श्री त्यागी प्रस्तुत हुए हैं उन्होंने अपने मुख्य बयान में अप्रैल 1982 से श्रमिक द्वारा कार्य पर आना बताया है किन्तु उनका यह कथन है प्रदर्श डब्ल्यू – 1 से गलत हो जाता है। उन्होंने यह स्वीकार किया है कि आखिरी बार फरवरी 1984 तक श्रमिक ने विभाग में कार्य किया था। जिरह में प्रदर्श डब्ल्यू – 1 के लिए उन्होंने यह कहा है कि यह उनके विभाग से जारी हुआ हो इसकी उन्हें जानकारी नहीं है। जिस अधिकारी ने प्रमाण पत्र जारी किया है वह साक्ष्य में प्रस्तुत नहीं हुए हैं व इसके अलावा विभाग ने किसी भी रूप में यह नहीं बताया है कि प्रदर्श डब्ल्यू– 1 व डब्ल्यू – 2 प्रमाण पत्र जो जारी किये गये हैं वे उनके विभाग से संबंधित नहीं हैं या उनमें वर्णित तथ्य सही नहीं हैं। प्रदर्श डब्ल्यू – 2 प्रमाण पत्र गवाह श्री त्यागी ने स्वंय द्वारा जारी करना स्वीकार किया है। इसके अतिरिक्त कार्य दिवसों के संबंध में गवाह श्री त्यागी के बयान में कोई भी महत्वपूर्ण तथ्य नहीं आया है। निष्कर्ष यह है कि दोनों पक्षों की मौखिक साक्ष्य व प्रदर्श डब्ल्यू – 2 से यह प्रमाणित है कि प्रत्येक श्रमिक ने जनवरी 1982 से फरवरी 1984 के बीच मस्टरोल के जरिये 240 दिन से अधिक कार्य किया था।

7. नियोजक ने जवाब में यह प्रतिरक्षा ली है कि जनवरी, 1982 से फरवरी, 1984 के बीच श्रमिक ने बार-बार स्वेच्छों से काम पर आना बन्द कर दिया था इसलिए बीच में जो भी व्यवधान हुए हैं उस कारण उसकी सेवा को 240 दिन के उद्देश्य से निरन्तर नहीं माना जा सकता। इस संबंध में पहले तथ्यात्मक स्थिति पर विचार किया जाता है। प्रदर्श डब्ल्यू – 1 व डब्ल्यू – 2 प्रमाण पत्र में उल्लिखित तथ्यों को श्रमिक ने विवादास्पद नहीं बताया है। प्रदर्श डब्ल्यू – 1 के पठन से यह स्पष्ट होता है कि जून 1983 में श्रमिक का नाम मस्टरोल पर दर्ज नहीं है इसके अलावा अक्तूबर 1983 व नवम्बर 1983 में श्रमिक ने मात्र थोड़े दिन के लिए ही मस्टरोल के जरिए कार्य किया था। श्रमिक ने अपने शपथ पत्र में यह कहा है कि जून 1973 में मस्टरोल नहीं होने के कारण उसे काम पर नहीं लिया गया था व पुनः जुलाई 1983 में मस्टरोल उपलब्ध होने पर काम पर लिया गया इस प्रकार यह गलत है कि वह जून 1983 में स्वेच्छा से गैर हाजिर रहा। इसी प्रकार दिसम्बर 1983 में स्वेच्छा से काम पर नहीं आना उसने गलत बताया है व यह कहा है कि उस समय विभाग ने काम बन्द रखा था। जिरह में उसने इस सुझाव को अस्वीकार किया है कि जून 1983 से वह काम पर नहीं आया व कहा कि उस माह में मस्टरोल बन्द था। दिसम्बर 1983 के लिए यह कहा है कि उस माह उसने काम नहीं किया होगा। फिर कहा कि मस्टरोल नहीं होने से विभाग के पास काम नहीं था। इस सुझाव को भी गवाह ने मना किया है कि सम्पूर्ण अवधि के बीच में वह अपनी मनमर्जी से काम पर आता था। इसके खंडन में गवाह श्री त्यागी ने यह बताया है कि जून 1983 में श्रमिक स्वेच्छा से काम पर नहीं आया था। जुलाई 1983 में वापस उसे मस्टरोल के जरिए मजदूरी पर रखा गया था। इसके अलावा नवम्बर 1983 में उसने मात्र 5 दिन काम किया व काम छोड़कर चला गया तथा पुनः जनवरी 1984 में आया तथा यह भी कहा है कि इस बीच विभाग में काम चालू था व मस्टरोल के जरिये अन्य मजदूर भी कार्यरत थे। जिरह में उन्होंने कहा है कि जून 1983 में श्रमिक उपस्थित नहीं था व यदि उपस्थित होता तो मस्टरोल में उसकी हाजिरी दर्ज की जाती। जून 1983, नवम्बर व दिसम्बर 1983 का मस्टरोल कोई भी विभाग की ओर से प्रस्तुत नहीं किया गया है। इसके अलावा अन्य कोई भी साक्ष्य इस संबंध में प्रस्तुत नहीं हुई। दोनों पक्षों की उपलब्ध साक्ष्य की संभावनाओं के आधार पर विनिश्चित किया जाना आवश्यक है व प्रदर्श डब्ल्यू – 1 व डब्ल्यू – 2 जो प्रमाण पत्र विभाग ने जारी किये हैं उनको व श्री त्यागी की साक्ष्य को देखते हुए यह माना जाता है कि जून 1983, नवम्बर व दिसम्बर 1983 में जिस अवधि में श्रमिक ने कार्य नहीं किया उस समय भी मस्टरोल के जरिये विभाग में कार्य चालू था व इस कारण श्रमिक का यह कथन स्वीकार्य नहीं है कि मस्टरोल चालू नहीं होने से उसे काम पर नहीं लिया गया। इसके बावजूद जहां तक वैधानिक स्थिति का प्रश्न है, उस बाबत श्रमिक के कथन पर कोई भी प्रभाव नहीं पड़ता है। दोनों पक्षों की मौखिक साक्ष्य से यह प्रकट होता है कि जनवरी 1982 से फरवरी 1984 के बीच समय-समय पर श्रमिक मजदूरी से अनुपस्थित रहा है व उस स्थिति में उसे मजदूरी का भुगतान नहीं किया गया है। नियोजक द्वारा इस संबंध में कोई भी अनुशासनिक कार्यवाही श्रमिक के खिलाफ नहीं की गई है। यदि वह साक्ष्य व परिस्थितियों से साबित हो कि जिस अवधि में ड्यूटी का व्यवधान रहा है उस बीच या तो श्रमिक स्वेच्छा से काम छोड़कर (एबेन्डुनमेंट) चला गया था व उसका वास्तविक आशय नौकरी छोड़ने का था या यह साबित हो कि विभाग ने किसी भी प्रकार उसकी सेवाएं समाप्त कर दी थी उसी स्थिति में व्यवधान का महत्व हो सकता है। श्रमिक जिस अवधि में अनुपस्थित रहा उसकी प्रकृति भी इस बिन्दु को विनिश्चित करने के लिए कुछ सीमा तक विचारणीय हो सकती है। दोनों पक्षों की साक्ष्य में जो तथ्य व परिस्थितियां आई हैं उनसे यह प्रमाणित मानने का आधार नहीं है कि जिस अल्प अवधि में श्रमिक अनुपस्थित रहा उसका कारण यह था कि वह वास्तव में नौकरी छोड़कर चला गया था व उसे नये सिरे के नियुक्तियां दी गई थीं। नये सिरे से नौकरी देने का अभिकथन नियोजक का नहीं है। यह भी मान्य स्थिति है कि लिखित आदेश नियुक्ति का कोई भी श्रमिक को नहीं दिया गया है तथा जिस रोज वह हाजिर होता या उस समय उसकी हाजिरी मस्टरोल में दर्ज की जाकर उसी के अनुसार मजदूरी का भुगतान किया जाता था। नियोजक पक्ष की यह प्रतिरक्षा कहीं भी नहीं है कि जनवरी 1982 से फरवरी 1984 के बीच उनके द्वारा कभी भी किसी भी प्रकार से श्रमिक की सेवाएं समाप्त की गई थी। निष्कर्ष यह है कि जनवरी 1982 से फरवरी 1984 के बीच जो अल्प व्यवधान मजदूरी के प्रमाणित हैं वे मात्र श्रमिक की अनुपस्थिति का संकेत देते हैं व उनसे यह धारणा देना वैधानिक रूप से उचित नहीं है कि उस अवधि में श्रमिक ने स्वेच्छा से नौकरी का परित्याग कर दिया था। इस प्रकार के तकनीकी व्यवधान का परिणाम मात्र यही हो सकता है कि श्रमिक को उस अवधि का वेतन नहीं दिया जाये जो कार्यवाही विभाग द्वारा की जा चुकी है। श्रमिक की ओर से इस संबंध में श्रीमति शाहिदा बनाम राजस्थान राज्य डब्ल्यू. एल. आर. 1992 (राज.) 353 का एक विधि दृष्टान्त प्रस्तुत किया गया है जिसमें प्रतिपादित सिद्धांत इस प्रकरण के तथ्यों को देखते हुए पूर्ण रूप से लागू होते हैं।

8. दूसरा तथ्यात्मक बिन्दु विनिश्चय हेतु यह है कि फरवरी 1974 के पश्चात् श्रमिक ने स्वेच्छा से काम पर आना बंद कर दिया (एबन्डनमेंट) अथवा नियोजक द्वारा उसकी सेवाएं समाप्त की गई। श्रमिक ने अपने क्लेम व शपथ पत्र में यह बताया है कि फरवरी 1984 के पश्चात् नियोजक द्वारा उसे सेवा से पृथक कर दिया गया व उसके बार-बार मौखिक अनुरोध के पश्चात् भी उसे सेवा में नहीं लिया गया। उसका यह भी कथन है कि नियोजक द्वारा इस संबंध में कार्यवाही नहीं करने के कारण बाद में उसने अपना विवाद समझौता अधिकारी के समक्ष प्रस्तुत किया था। श्रमिक का यह भी कथन है कि यदि वह स्वेच्छा से अनुपस्थित हो जाता तो विभाग द्वारा उसे नोटिस देना और कार्यवाही करना अपेक्षित था किन्तु इस प्रकार की कोई कार्यवाही नहीं की गई। जिरह में मात्र एक प्रश्न श्रमिक से पूछा गया है जिसका उत्तर उसने यह दिया है कि यह कहना गलत है कि उसने फरवरी 1984 के पश्चात् काम पर आना बंद कर दिया था। जिरह में उसने यह भी कहा है कि उसे नौकरी पर लेने के संबंध में डिवीजनल इंजीनियर व सब-डिवीजनल ऑफिसर से मिला था किन्तु किसी को लिखित में शिकायत नहीं की व दोनों अधिकारियों ने यह आश्वासन दिया था कि

के उसे काम पर ले लेंगे। इस साक्ष्य के विपरीत गवाह श्री त्यागी ने नियोजक की ओर से यह बताया है कि श्रमिक ने स्वेच्छा से काम पर आना बंद कर दिया था व आकस्मिक मजदूरों के संबंध में ऐसी स्थिति में कोई नोटिस देना या कार्यवाही करना विभाग के लिए नियमानुसार आवश्यक नहीं था। जिरह में उन्होंने इस सुझाव को माना है कि श्रमिक को फरवरी 1984 के पश्चात् काम पर लेने से मना किया हो। यह भी स्वीकार किया गया है कि श्रमिक के अनुपस्थित रहने पर उसे कोई भी नोटिस नहीं दिया गया व न ही इस संबंध में कोई कार्यवाही की गई। इस प्रकार दोनों गवाहों का विचार किया जाना आवश्यक है। साक्ष्य में यह भी आया कि श्रमिक के मांगने पर 1990 में प्रदर्श डब्ल्यू-1 व डब्ल्यू-2 प्रमाण पत्र कार्य दिवसों के संबंध में विभाग द्वारा जारी किये गये थे। जिन अधिकारियों को मौखिक काम पर लेने या निवेदन करना श्रमिक ने बताया है उनमें से किसी भी अधिकारी को नियोजक की ओर से प्रस्तुत नहीं किया गया है। श्रमिक ने स्वेच्छा से काम पर नहीं आने के संबंध में कोई भी टिप्पणी किसी भी मस्टररोल में दर्ज नहीं की गई है। प्रदर्श डब्ल्यू-3 असफल वार्ता के प्रतिवेदन से यह स्पष्ट है कि श्रमिक ने अपना विवाद समझौता अधिकारी के समक्ष 1990 में अर्थात् सेवा मुक्ति के करीब 6 वर्ष बाद प्रस्तुत किया था। असफल वार्ता में यह उल्लेख है कि प्रबन्धक के द्वारा यह प्रतिरक्षा की गई थी कि श्रमिक स्वेच्छा से काम छोड़कर चला गया था। किन्तु साथ में यह सुझाव दिया कि वे नये सिरे से श्रमिक को मजदूरी पर रखने के लिए तैयार हैं। इस प्रकार अभिलेख से यह स्पष्ट है कि श्रमिक ने समझौता वार्ता से पूर्व कार्य दिवसों के विवरण के अलावा विभाग को कोई भी नोटिस सेवा मुक्ति के संबंध में नहीं दिया व समझौता वार्ता भी करीब 6 वर्ष के पश्चात् उसकी प्रार्थना पर प्रारंभ हुई है किन्तु उसके बावजूद दोनों पक्षों की ओर से जो मौखिक साक्ष्य व परिस्थितियां प्रस्तुत हुई हैं उनसे यह धारणा नहीं की जा सकती कि श्रमिक ने स्वेच्छा से काम पर आना बंद कर दिया था। समझौता वार्ता देरी से प्रारंभ करवाने के संबंध में कोई भी स्पष्टीकरण जिरह के माध्यम से श्रमिक से नहीं लिया गया है। देरी से समझौता अधिकारी के समक्ष विवाद प्रस्तुत करने के कई कारण हो सकते हैं व नियोजक का यह दायित्व था कि वे इस संबंध में श्रमिक से जिरह में स्पष्टीकरण प्रस्तुत करवाने का प्रयास करता। अतः यह विनिश्चय किया जाता है कि मार्च 1984 के पश्चात् श्रमिक की सेवाएं विभाग में समाप्त की गई हैं।

9. नियोजक ने अपने जवाब में यह स्वीकार किया है कि श्रमिक के मामले में धारा 25-एफ, जी व एच अधिनियम के प्रावधानों की कोई पालना नहीं की गई है। चूंकि यह तथ्यात्मक रूप से साबित माना गया है कि श्रमिक ने 240 दिन से अधिक कार्य किया था इसलिए धारा 25-एफ के प्रावधान की पालना किया जाना नियोजक के लिए आज्ञापक था। धारा 25 जी व एच के प्रावधान भी आज्ञापक हैं इस संबंध में श्रमिक के विद्वान प्रतिनिधि ने माननीय राजस्थान उच्च न्यायालय के डी.पी. सिविल स्पेशल अपील नं. 218/90 में दिये गये निर्णय की फोटो प्रति पेश की है इसके अलावा 1987 लैब. आई. सी. (कर्नाटक) 1362 का एक निर्णय भी प्रस्तुत किया है। नियोजक की ओर से इसके विपरीत कोई भी विधि दृष्टान्त प्रस्तुत नहीं किया गया। नियोजक के गवाह श्री त्यागी ने जिरह में यह स्वीकार किया है कि मार्च 1984 में व उसके पश्चात् भी श्रमिक से कनिष्ट कामगार कार्यरत थे व उसके पश्चात् भी अन्य लोगों को मस्टररोल के जरिये नियोजित किया गया था। इन तथ्यों से धारा 25 जी व एच के प्रावधान की अवहेलना करना नियोजक द्वारा साबित होता है।

10. श्रमिक ने अपने क्लेम में व शपथपत्र में यह वर्णित किया है कि कथित सेवा मुक्ति के बाद वह पूर्ण रूप से बेरोजगार है। जिरह में इस तथ्य को अभिखंडित करने के लिए कोई भी प्रश्न नहीं पूछा गया है नियोजक की ओर से इसके विपरीत कोई भी साक्ष्य प्रस्तुत नहीं की गई है ऐसी स्थिति में सामान्यतः श्रमिक सेवा मुक्ति से सेवा में पुनः आने की तिथि तक सम्पूर्ण बकाया वेतन प्राप्त करने का अधिकारी है किन्तु जिन तथ्यों पर विचार किया गया है उनसे यह साबित है कि 1984 में सेवा मुक्ति के पश्चात् श्रमिक द्वारा अपना विवाद समझौता अधिकारी के समक्ष 1990 में प्रस्तुत किया गया था इसलिए उस अवधि तक का पिछला बकाया वेतन स्वीकृत किया जाना न्यायोचित प्रकट नहीं होता।

11. निर्देशित विवाद का अधिनिर्णय इस प्रकार किया जाता है कि श्रमिक अशोक कुमार पारीक दिनांक 1-3-84 से सेवा की निरन्तरता कायम रखते हुए पुनः सेवा में आने का व जुलाई 1990 से सेवा में आने की तिथि का समस्त पिछला बकाया वेतन व अन्य लाभ प्राप्त करने का अधिकारी है।

12. अवार्ड आज दिनांक 1-5-95 को लिखाया जाकर सुनाया गया जो केन्द्र सरकार को प्रकाशनार्थ नियमानुसार भेजा जाये।

के. एल. व्यास, न्यायाधीश

नई दिल्ली, 17 जनवरी, 1996

का.आ. 360.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार टेलीकाम के प्रबन्ध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16/1/96 को प्राप्त हुआ था।

[संख्या एल-40012/107/78-डी-2 (बी)]
के. वी. बी. उन्नी, डैस्क अधिकारी

New Delhi, the 17th January, 1996

S.O. 360.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Telecom and their workmen, which was received by the Central Government on 16-1-1996.

[No. L-40012/107/88-D.II (B)]
K. V. B. UNNY, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR (MP)

CASE Ref. CGIT/LC(R)(116)/1989

BETWEEN

Shri Shakur Khan C/o House of Shantibai, Ward No. 6, Bhatpara, Rajnandgaon (MP)-491441.

AND

The Telecom District Engineer, Dur, Raipur (MP) 442001.

PRESIDED IN :

By Shri Arvind Kumar Awasthy.

APPEARANCES :

For Workman—Shri H. B. Agarwal, Advocate.

For Management—Shri Anoop Choudhary, Advocate.

INDUSTRY : Telegraph DISTRICT : Raipur (MP)

AWARD

Dated, the 29th December, 1995

This is a reference made by the Central Government, Ministry of Labour, vide its Notification No. L-40012/107/

88-D (B) dated 24th May, 1989, for adjudication of the following industrial dispute :—

SCHEDULE

"Whether the action of the management of Telecom Distt. Engineer, Durg at Raipur (MP) in relation to their S.D.O. Telegraph, Rajnandgaon (MP) in terminating the services of Shri Shakur Khan, Jeep Driver w.e.f. 30-7-88 and not considering him for regularisation in the said post is justified ? If not to what relief is the workman entitled to ?"

2. The case of the workman is that he was a permanent employee and worked as a Driver of S.D.O. (T) at Rajnandgaon. The case of the workman further is that he has worked for more than 240 days in a calendar year and he was terminated without notice and compensation. Workman has prayed for reinstatement with back wages.

3. The case of the management is that Shri Shakur Khan, the workman concerned, was engaged purely on casual and daily rated wages w.e.f. 15-9-87, that he was engaged purely on daily wages with no right for any absorption in the department against the regular vacancies and that he was informed that his services will not be required after 30-7-88. He is not entitled for any relief.

4. Terms of reference was made the issue in the case.

5. The case was posted for evidence but neither the workman nor the management has led evidence to prove their case. However, Shri H. B. Agarwal, Advocate, appearing for the workman has pleaded no instructions. The workman has failed to discharge the initial burden of proving his case. Consequently, reference is answered against the workman. Parties to bear their own costs.

ARVIND KUMAR AWASTHY, Presiding Officer

नई दिल्ली, 17 जनवरी, 1996

का.आ. 361.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार टेलीकाम के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-1-96 को प्राप्त हुआ था।

[संख्या एल-40012/141/90 आई आर डी यू]

के. वि. बी. उन्नी, डैस्क अधिकारी

New Delhi, the 17th January, 1996

S.O. 361.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Telecom and their workmen, which was received by the Central Government on 16-1-1996.

[No. L-40012/141/90-IR (DU)]

K. V. B. UNNY, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR (MP)

Case Ref. No. CGIT/LC(R)(12)/1991

BETWEEN

Shri Kamal Kewat, represented through the Secretary, All India Post and Telegraph Industrial Workers Union, Telecom Factory Branch, Qr. No. 329, D Type, Telecom Factory Estate, Jabalpur (MP)-482001.

AND

The General Manager, Telecom Factory, Jabalpur (MP)-482001.

PRESIDED IN :

By Shri Arvind Kumar Awasthy.

APPEARANCES :

For Workman—Shri Rajendra Menon, Advocate.

For Management—Shri S. S. Jha, Advocate.

INDUSTRY : Telecom DISTRICT : Jabalpur (MP)

AWARD

Dated, the 28th December, 1995

This is a reference made by the Central Government, Ministry of Labour, vide its Notification No. L-40012/141/90-IR (DU) dated 23/31-1-1991, for adjudication of the following industrial dispute :—

SCHEDULE

"Whether the action of the management of Telecom Factory, Jabalpur in imposing the penalty of reduction of pay by two stages from Rs. 1300 to Rs. 1225 and also with holding of increment for a period of two years on Shri Kamal Kawat, T. No. 2002, examiner Gr. I is justified ? If not, to what relief the concerned workman is entitled to ?"

2. The case of the workman is that the chargesheet was issued against the workman on the false allegation that on 5-1-1985 at about 10 a.m. the workman committed misconduct inasmuch as he abused and assaulted Shri Sonilal; that Shri Jaswant Singh conducted the domestic enquiry and all the witnesses of the management categorically denied that the workman abused or assaulted Shri Sonilal; that the Disciplinary Authority has again appointed the Enquiry Officer and in the second enquiry all the witnesses of the management stated that they had not seen the delinquent employee committing the alleged misconduct of giving abuses and assaulting Shri Sonilal; that the finding of the Enquiry Officer is perverse and the punishment proposed by the Disciplinary Authority is unwarranted.

3. The case of the management is that the domestic enquiry conducted by Shri Jaswant Singh, on scrutiny, was found defective and the de novo enquiry was conducted by another officer; that the Enquiry Officer provided full opportunity to the workman to participate in the domestic enquiry and the findings were in accordance with the evidence on record.

4. Following the issues framed in the case :

ISSUES

1. Whether the enquiry is just, proper and legal ?
2. Whether the management is entitled to lead evidence before this Tribunal ?
3. Whether the charges of misconduct are proved on the facts of the case ?
4. Whether the punishment awarded is proper and legal ?
5. Relief and costs.

FINDINGS

5 Issue No. 1 regarding the fairness of the domestic enquiry was answered in favour of the management. As such the only point remains for scrutiny is whether witnesses of the management have proved that the workman on 5-1-1985 at about 10 a.m. abused and tried to assault one Shri Sonilal.

6. Complainant, Shri Sonilal, has clearly stated vide his statement dated 1-7-1985 that he has not lodged any report against the delinquent employee nor the delinquent, Kamal Kewat, has ever assaulted or abused him. Witnesses of the incident has clearly stated that he has not seen any incident and his officer Shri D. K. Jain forced him to sign the statement against the workman. However, from the report of the Enquiry Officer dated 27-3-1989 it is clear that the finding against the workman regarding the alleged

misconduct was on the circumstances and conjecture. The complainant again and again reiterated before the Enquiry Officer that the workman, Kamal Kewat, has neither abused or assaulted him nor committed any offence. Statement made by the complainant and by witnesses before the Enquiry Officer to the effect that their signatures were forcibly taken by Shri Jain were overlooked by the Enquiry Officer. The Enquiry Officer has further overlooked the statement of the management's witnesses that the threat was extended to them by the management to make the statement against the workman, Kamal Kewat. Consequently, it is clear that there is no reliable evidence against the workman, Kamal Kewat, that he is guilty of committing the alleged misconduct of abusing or assaulting Shri Sonilal. There is no evidence against the workman to prove the misconduct and findings of the Enquiry Officer holding the workman guilty of the misconduct is perverse. Consequently, imposition of penalty of reduction in pay by two stages and also withholding of increment for a period of two years was improper and illegal.

7 Reference is answered in favour of the workman. The action of the management as alleged in terms of reference of withholding the increment and imposing the penalty of reduction of pay is held unjustified. Workman is entitled for all the consequential relief of which he was deprived on account of the imposition of the penalty of reduction of the pay and also withholding of increments for two years. No order as to costs.

ARVIND KUMAR AWASTHY, Presiding Officer

नई दिल्ली, 17 जनवरी, 1996

का.आ. 362.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार फोन्स के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, जयपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-1-96 को प्राप्त हुआ था।

[संख्या एल-40012/74/90—आई.आर.(डी.यू)]
के. वि.बी. उन्नी, डैस्क अधिकारी

New Delhi, the 17th January, 1996

S.O. 362.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Phones and their workmen, which was received by the Central Government on 16-1-1996.

[No. L-40012/74/90-IR (DU)]
K. V. B. UNNY, Desk Officer

अनुबन्ध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं. सी. आई. टी. 13/1991

रैफरेंस : केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश क्रमांक एल-40012/74/90-आई. आर. डी. यू. दि. 31-1-91

श्याम लाल ओझा, पुत्र श्री मगनीराम ओझा, निवासी चावण्डया, पोस्ट बनका खेड़ा, जिला भीलवाड़ा।

—प्रार्थी

बनाम

सब डिवीजनल आफीसर, फोन्स, भीलवाड़ा-311001 टेलीफोन डिपार्टमेंट (भीलवाड़ा)

—अप्रार्थी

उपस्थित

माननीय न्यायाधीश श्री के. एल. व्यास, आर. एच. जे. एस.
प्रार्थी की ओर से : श्री कानसिंह राठौड़
अप्रार्थी की ओर से : श्री बी. एस. गुर्जर
दिनांक अवार्ड : 31-5-95

अवार्ड

केन्द्र सरकार द्वारा निम्न विवाद अधिनिर्णय हेतु निर्देशित किया गया है :

"Whether the action of Telecom Deptt. in terminating the services of Shri Shyamal, s/o Shri maganiram Ji Ojha Labourers w.e.f. 1-1-87 is justified ? If not what relief is the worker concerned entitled ?"

2. श्रमिक ने अपने विद्वान क्लेम में यह अधिकथित किया है कि उसकी प्रथम नियुक्ति विपक्षी सब-डिवीजनल आफीसर टेलीफोन्स भीलवाड़ा के यहां जून 1979 में की गई थी व उस समय से उसने लगातार 1-11-87 तक नियोजक के यहां कार्य किया था व 1-11-87 से उसकी सेवाएं बिना किसी नोटिस व बिना छंटनी पूर्ति की राशि अदा किए समाप्त की गई व इसके अलावा सेवा मुक्ति के समय नियोजक द्वारा धारा 25-जी व 25-एच औद्योगिक विवाद अधिनियम 1947 (जिसे बाद में अधिनियम संबोधित किया जाएगा) के प्रावधान की पालना भी नहीं की गई। श्रमिक ने यह तथ्य उल्लिखित किया है कि उसकी सेवा मुक्ति के समय उससे कनिष्ठ श्रमिकगण कार्यरत थे व उसकी सेवा मुक्ति के पश्चात नए श्रमिकों को भर्ती भी की गई थी। इसके अलावा यह अधिकथित किया गया है कि श्रमिक ने सेवा मुक्ति के पश्चात मौखिक व लिखित रूप में नियोजक को पुनः सेवा में लेने के लिए अनुरोध किया था किन्तु उन्होंने इस तरफ ध्यान नहीं दिया व इस कारण समझौता अधिकारी के समक्ष श्रमिक ने अपना विवाद प्रस्तुत किया। समझौता अधिकारी के समक्ष नियोजक ने श्रमिक को पुनः सेवा में लेने के सुझाव को स्वीकार नहीं किया गया व परिणामस्वरूप असफल वार्ता के कारण यह विवाद निर्देशित किया गया।

3. नियोजक की ओर से प्रस्तुत जवाब में इस तथ्य को स्वीकार किया गया है कि श्रमिक को सर्वप्रथम सितम्बर 1979 में दैनिक वेतन पर आकस्मिक श्रमिक के रूप में नियोजित किया गया था उस समय उसने जनवरी 1983 तक लगातार कार्य किया था किन्तु बाद में अनुपस्थित हो गया व कुछ समय के लिए पुनः जून 1983 में उसने कार्य किया था। नवम्बर 1983 के पश्चात श्रमिक स्वेच्छा से अनुपस्थित हो गया व पुनः 1986 दिसम्बर में कार्य पर आया था व अक्टूबर 1987 तक उसने मस्टररोल पर कार्य किया था व उसके पश्चात स्वेच्छा से नौकरी छोड़कर चला गया। इस प्रकार नियोजक की प्रतिरक्षा यह है कि दिसम्बर 1986 से अक्टूबर 1987 के बीच श्रमिक ने मात्र 196 दिन कार्य किया था व तत्पश्चात वह स्वेच्छा से नौकरी छोड़कर चला गया था इस कारण धारा 25-एफ के प्रावधान की पालना करना नियोजक के लिए आज्ञापक नहीं था। यह भी स्वीकार किया गया है कि श्रमिक ने जिस समय स्वेच्छा से काम पर आना बंद किया उस समय नियोजक के पास कार्य उपलब्ध था। धारा 25-जी व 25-एच के प्रावधान की अवहेलना के संबंध में कोई भी विशिष्ट खण्डन नियोजक की ओर से जवाब में प्रस्तुत नहीं किया गया है।

4. मौखिक साक्ष्य के रूप में श्रमिक की ओर से उसका स्वयं का शपथ पत्र प्रस्तुत किया है। श्रमिक ने प्रदर्श डब्ल्यू-1 से प्रदर्श डब्ल्यू-11 प्रवेश प्रस्तुत किए हैं व नियोजक की ओर से प्रदर्श ए-1 व प्रदर्श ए-2 प्रवेश प्रस्तुत किए गए हैं। बहस दोनों पक्षों की सुनी गई।

5. दोनों पक्षों के अभिकथनों को व मान्य तथ्यों को देखते हुए विनिश्चय हेतु प्रथम बिन्दु यह उपलब्ध होता है कि क्या श्रमिक ने कथित सेवा मुक्ति से पूर्व नियोजक के यहां लगातार 240 दिन से अधिक कार्य किया । शपथ पत्र में श्रमिक ने जून 1979 से अक्टूबर 1987 तक लगातार नियोजक के यहां कार्य करना बताया है व 1-11-87 से सेवा मुक्ति की बात अभिव्यक्त की है । इस संबंध में विभाग द्वारा जारी किए गए प्रमाण पत्र प्रदर्श डब्ल्यू-1 से डब्ल्यू-7 भी श्रमिक ने प्रस्तुत किए हैं । इसके विपरीत नियोजक के गवाह श्री ओम प्रकाश शर्मा का कथन है कि श्रमिक को पहली बार सितम्बर 1979 में नियोजित किया गया था व 1983 तक उसने बार बार अनुपस्थित रहकर अलग अलग अवधि में कार्य किया था व अंत में जून 1983 के पश्चात व दिसम्बर 1986 में काम करने आया था । यदि नियोजक पक्ष के इस कथन को स्वीकार किया जाए तो निश्चित रूप से दिसम्बर 1986 से पूर्व श्रमिक द्वारा की गई सेवाओं की लगातार सेवा की परिभाषा में नहीं माना जा सकता क्योंकि श्रमिक ने अपने क्लेम में व साक्ष्य में यह नहीं बताया है कि जून 1983 से दिसम्बर 1986 तक नियोजक ने उसे काम पर नहीं लिया था अथवा यह भी उसने नहीं कहा है कि इस अवधि में वह किस विशेष परिस्थिति के कारण काम पर नहीं आ सका था व इसलिए इस अवधि को अवकाश के रूप में माना जाए । सामान्य नियम के अनुसार मस्टररोल के जरिए कार्यरत श्रमिक यदि लगातार 3-4 वर्ष काम पर नहीं आता है तो उसे अवकाश पर रहना नहीं माना जा सकता व यह धारणा भी नहीं ली जा सकती कि यह व्यवधान मात्र अस्थाई रूप से था इसलिए श्रमिक की सेवाएं निरन्तर मानी जाए । जो तथ्य श्रमिक ने बताया है उनको देखते हुए यदि नियोजक का कथन स्वीकार्य हो तो उस स्थिति में मात्र यही धारणा नियमानुसार ली जा सकती है कि श्रमिक ने जून 1983 के पश्चात स्वेच्छा से काम पर आना बंद कर दिया था इसलिए कथित सेवा मुक्ति से पूर्व उन सेवाओं की कुल कार्य दिवस की अवधि में शामिल नहीं किया जा सकता । नियोजक के गवाह श्री ओम प्रकाश शर्मा ने इस संबंध में जो साक्ष्य प्रस्तुत की है उस पर कोई भी सारवान जिरह उनसे नहीं की गई है । इसके अलावा विभाग की ओर से जारी प्रदर्श डब्ल्यू-1 से डब्ल्यू-7 प्रमाण पत्रों का अविलम्ब श्रमिक ने स्वयं लिया है । उनके पठन से यह स्थिति स्पष्ट है कि श्रमिक ने वर्तमान नियोजक के यहां सितम्बर 1979 से कार्य किया था व अगस्त 1980 तक 291 दिन कार्य किया था जैसा कि प्रदर्श डब्ल्यू-2 में वर्णित है । इसके पश्चात श्रमिक ने सितम्बर 1980 से जुलाई 1981 तक 272 दिन काम किया था जैसा कि प्रदर्श डब्ल्यू-3 प्रमाण पत्र में प्रदर्शित है । प्रदर्श डब्ल्यू-4 प्रमाण पत्र के अनुसार अगस्त 1981 से मार्च 1982 के बीच श्रमिक ने कुल कितने दिन कार्य किया था यह प्रदर्श डब्ल्यू-4 को देखने से पठन योग्य नहीं होने से निश्चित नहीं किया जा सकता । इसके पश्चात अप्रैल 1982 से मार्च 1983 तक श्रमिक ने नियोजक के यहां कुल 272 दिन कार्य किया था जैसा कि प्रदर्श डब्ल्यू-5 व डब्ल्यू-6 में उल्लिखित है । जून 1983 में श्रमिक ने 13 दिन कार्य किया था व उसके पश्चात उसकी उपस्थिति दिसम्बर 1986 से बताई हुई है जैसा कि प्रदर्श डब्ल्यू-7 प्रमाण पत्र में बताया हुआ है । श्रमिक की मौखिक साक्ष्य व प्रदर्श डब्ल्यू-1 से प्रदर्श डब्ल्यू-7 प्रमाण पत्रों से यह स्पष्ट है कि जून 1983 के पश्चात श्रमिक काम पर नहीं था व बाद में दिसम्बर 1986 से उसने कार्य करना प्रारंभ किया । बीच की अवधि में अनुपस्थित रहने के संबंध में कोई भी स्पष्टीकरण क्लेम या साक्ष्य में श्रमिक ने प्रस्तुत नहीं किया है व इस कारण जून 1983 तक की अवधि को सेवा मुक्ति के समय कुल अवधि में शामिल किया जाना किसी भी रूप में सही नहीं है ।

6. दोनों पक्षों की मौखिक साक्ष्य व नियोजक द्वारा प्रस्तुत प्रमाण पत्र डब्ल्यू-7 से यह स्पष्ट है कि श्रमिक ने दिसम्बर 1986 से अक्टूबर 1987 के बीच लगातार नियोजक के यहां मस्टररोल के जरिए 196 दिन काम किया था । श्रमिक के विद्वान प्रतिनिधि का कथन है कि 196 दिन की अवधि वह है जिसके लिए वास्तविक रूप से काम करने के कारण मजदूरी का भुगतान श्रमिक को किया गया है व इस अवधि में आने वाले साप्ताहिक अवकाश व राष्ट्रीय अवकाशों को उसमें शामिल नहीं किया गया है । यद्यपि किसी भी पक्ष ने अपने क्लेम, जवाब व मौखिक साक्ष्य में इस संबंध में कोई तथ्य वर्णित नहीं किया है किन्तु उपलब्ध तथ्यों को देखते हुए श्रमिक पक्ष के इस कथन को अस्वीकार ही किया जा सकता । नियोजक के विद्वान प्रतिनिधि ने बहस में इस तर्क का किसी भी रूप में खण्डन नहीं किया है । जितने भी प्रमाण पत्र विभाग द्वारा जारी किए गए है उनमें मात्र कार्य दिवसों का उल्लेख है । इसके अलावा प्रदर्श ए-1 मस्टररोलज' फोटो प्रति प्रस्तुत की गई है उसमें भी उन तिथियों पर श्रमिक की उपस्थिति दर्ज है जिस दिन उसने काम किया था । नियोजक ने अपने जवाब में यह प्रतिरक्षा नहीं ली है कि 196 दिन में साप्ताहिक अवकाश व राष्ट्रीय अवकाश भी शामिल है । जिन मस्टररोल्स के जरिए श्रमिक ने कार्य किया था उनको भी विचारार्थ नियोजक द्वारा प्रस्तुत नहीं किया गया है । सभी प्रमाण पत्रों में महीने के विवरण के साथ कार्य दिवसों का उल्लेख है व उनमें कहीं भी साप्ताहिक अवकाशों को शामिल करने का उल्लेख नहीं है । बहस के समय नियोजक के विद्वान प्रतिनिधि को इस संबंध में विशिष्ट रूप से अपना तर्क प्रस्तुत करने का अनुरोध भी किया गया था किन्तु उन्होंने श्रमिक पक्ष के कथन का खण्डन नहीं किया । यह मान्य स्थिति है कि कार्य दिवसों में साप्ताहिक अवकाश व राष्ट्रीय अवकाशों को भी शामिल किया जाना आवश्यक है । इस संबंध में श्रमिक की ओर से एक विधि पुष्टान्त वर्कमैन आफ अमरिकन एक्सप्रैस बैंकिंग कार्पोरेशन बनाम अमेरिका एक्सप्रैस बैंकिंग कार्पोरेशन सिविल अपील नं 330/1982 निर्णय दिनांक 28-8-85 का अवलंब लिया है । नियोजक की ओर से इस विधिक स्थिति को किसी प्रकार चुनौती नहीं दी गई है । अतः यह माना जाता है कि कथित सेवामुक्ति से पूर्व श्रमिक ने नियोजक के यहां लगातार 240 दिन से अधिक कार्य किया था क्योंकि 11 माह की अवधि में करीब 45 साप्ताहिक अवकाश सामान्य रूप से होते हैं व इसके अलावा कुछ राष्ट्रीय अवकाशों की धारणा लिया जाना भी न्यायसंगत है ।

7. अगला विचारणीय बिन्दु यह है कि क्या 1-11-87 से श्रमिक ने स्वेच्छा से सेवा का परित्याग किया अथवा उसे सेवा मुक्त किया गया । श्रमिक ने अपने क्लेम व शपथ पत्र में यह बताया है कि 1-11-87 से उसे काम पर लेने से नियोजक ने मना कर दिया व परिणामस्वरूप उसने लिखित व मौखिक आवेदन प्रस्तुत किए थे व समझौता अधिकारी के समक्ष भी अपना विवाद प्रस्तुत किया था । यह मान्य स्थिति है कि आखिरी मस्टररोल प्रदर्श ए-1 में 13-10-87 के पश्चात श्रमिक की उपस्थिति दर्ज नहीं है । इस मस्टररोल पर या अन्य किसी प्रलेख पर ऐसा उल्लेख नहीं है कि श्रमिक ने स्वेच्छा से काम पर आना बंद कर दिया हो । अन्य कोई प्रलेख नियोजक की ओर से प्रस्तुत भी नहीं किया गया है । नियोजक पक्ष के गवाह ने जिरह में यह माना है कि श्रमिक द्वारा कथित रूप से काम पर आने से बंद करने के पश्चात उसे किसी प्रकार का नोटिस नहीं दिया गया क्योंकि आकस्मिक मजदूरी के लिए ऐसा करना नियमों में आवश्यक नहीं है । यह स्थिति प्रमाणित है कि श्रमिक ने 240 दिन से अधिक काम किया था इसलिए यदि उसने काम पर आना स्वेच्छा से बंद कर दिया तो भी नियोजक के लिए यह स्वाभाविक था कि वे इसका उल्लेख किसी प्रलेख पर करते अथवा श्रमिक को लिखित में कोई नोटिस उसका नाम काटने से पूर्व भेजा जाता । ऐसी कोई कार्यवाही नियोजक द्वारा नहीं की गई है । श्रमिक से जिरह में मात्र एक प्रश्न पूछा गया है जिसके उत्तर में यह उसने बताया है कि उसने स्वेच्छा से काम पर आना बंद नहीं किया था । नियोजक की ओर से प्रस्तुत गवाह श्री ओम प्रकाश शर्मा ने माननीय मुख्य बयान में यह कहा कि श्रमिक ने स्वेच्छा से काम पर आना बंद कर दिया था व जिरह में जिन तथ्यों को स्वीकार किया है उन पर पूर्व में टिप्पणी की जा चुकी है ।

8. श्रमिक ने शपथ पत्र के पद सं. 7 में यह बताया है कि नौकरी से हटाने के पश्चात उसने व्यक्तिगत रूप से नियोजक को काम पर लेने का अनुरोध किया था व लिखित प्रार्थना पत्र भी प्रस्तुत किया था । रजिस्ट्री से 1-1-90 को पत्र भेजना भी बयान में बताया गया है । 1-1-90 को भेजे गए पत्र की प्रति की रसीद की फोटो प्रति प्रदर्श डब्ल्यू-14 साक्ष्य में

प्रस्तुत की गई है । इस तथ्य को नियोजक की ओर से जवाब या साक्ष्य में अस्वीकार नहीं किया गया है । मौखिक रूप से श्रमिक द्वारा अनुरोध किये किया गया यह बयान में स्पष्ट नहीं किया गया है किन्तु मात्र इस आधार पर उसके कथन को संदिग्ध नहीं माना जा सकता । समझौता अधिकारी द्वारा जो असफल वार्ता का प्रतिवेदन श्रमिक ने प्रस्तुत किया है वह प्रदर्श डब्ल्यू-11 है उसमें भी यह उल्लेख है कि नियोजक पक्ष ने श्रमिक को पुनः नए सिरे से काम पर लेने से इस आधार पर मना किया कि वह स्वेच्छा से काम छोड़कर चला गया था । जहां तक 240 दिन लगातार कार्य करने का प्रश्न है, उस संबंध में कोई भी सारवान विवाद नियोजक की ओर से समझौता अधिकारी के समक्ष नहीं उठाया गया था। प्रस्तुत मौखिक साक्ष्य व उस पर किए गए विवेचन व अन्य सुसंगत परिस्थितियों के विवेचन के परिणामस्वरूप यह माना जाता है कि नियोजक द्वारा श्रमिक को 1-11-87 से सेवा से हटाया गया था व उसने स्वेच्छा से काम पर आना बंद नहीं किया था । इस परिस्थिति में नियोजक द्वारा धारा 25-एफ के प्रावधान की पालना किया जाना आज्ञापक था इस बात पर कोई भी विवाद नहीं हो सकता व श्रमिक के विद्वान प्रतिनिधि ने इस संबंध में कुछ प्रलेख विधि वृष्टान्त प्रस्तुत किए हैं जो निम्न प्रकार हैं:

1. रामजी सिंघला बनाम अधिशासी अभियन्ता दक्षिण रेलवे एन. एल. एन. (एस. सी.) 258

2. माधो शंकर धवे बनाम राजस्थान राज्य डब्ल्यू. एल. आर. 1991 (139)

3. अरविंद मुराणा बनाम राजस्थान राज्य डब्ल्यू. एल. आर. 1991 पेज 142

4 एस. बी. सिविल रिट पिटीशन नं. 889/81 बी. आर. आयरन मिल्स बनाम मजदूर यूनियन निर्णय दि. 10-11-81

9. यह भी मान्य स्थिति है कि नियोजक द्वारा श्रमिक की सेवा मुक्ति से पूर्व धारा 25-एफ के प्रावधान के अनुसार श्रमिक को न तो नोटिस दिया गया व न ही क्षतिपूर्ति की राशि अदा की गई । अतः इस आधार पर श्रमिक की सेवा मुक्ति की कार्यवाही अनुचित एवं अवैध है ।

10. श्रमिक की ओर से क्लेम में यह भी अभिकथित किया गया है कि नियोजक द्वारा श्रमिक की सेवा मुक्ति से पूर्व धारा 25-जी व 25-एच अधिनियम के प्रावधान की पालना नहीं की गई। इन प्रावधानों की पालना उस स्थिति में ही किया जाना आज्ञापक है जहां धारा 25-एफ के प्रावधान लागू नहीं होते है ऐसा श्रमिक की ओर से बहस में बताया गया है व इस संबंध में 1987 लैब. आई. सी. 136 (गुजरात) व माननीय राजस्थान उच्च न्यायालय द्वारा डी. बी. सिविल स्पेशल अपील नं. 218/90 में दिए गए निर्णय दिनांक 23-4-91 प्रस्तुत किया गया है व इस संबंध में नियोजक की ओर से विधिकरूप से कोई भी विपरीत तर्क प्रस्तुत नहीं किया गया है । अतः तथ्यों के आधार पर यह विनिश्चय किया जाना है कि क्या नियोजक द्वारा धारा 25-एच व जी के प्रावधान की अवहेलना की गई है ।

11. श्रमिक ने अपने शपथ पत्र के पद सं. 9 में यह उल्लेख किया है कि उसकी सेवा मुक्ति के समय विभाग द्वारा कोई भी वरिष्ठता सूची प्रकाशित नहीं की गई व उस समय नियोजक के यहां बाबू लाल, भंवर लाल, प्रहलाद राय व अन्य श्रमिक कार्यरत थे व उसे सेवा मुक्त करने के पश्चात घनश्याम लाल, गोविन्द शरण को कार्य पर रखा गया था जो अभी भी कार्यरत हैं । उनकी नियुक्ति के समय श्रमिक को ड्यूटी पर आने के लिए कोई अवसर नहीं दिया गया । इन तथ्यों पर कोई भी जिरह श्रमिक से नहीं की गई है इसलिए उनको विश्वास नहीं करने का कोई आधार नहीं हो सकता । नियोजक के गवाह श्री ओम प्रकाश ने शपथ पत्र में यह माना है कि कोई भी वरिष्ठता सूची जारी नहीं की गई थी क्योंकि आकस्मिक श्रमिकों के मामले में इस प्रकार का कोई भी नियम उपलब्ध नहीं है । किन्तु जिरह में उन्होंने यह माना है कि 1-11-87 को कोई भी वरिष्ठता सूची जारी नहीं की गई थी किन्तु वरिष्ठता सूची 1985 से बनाई जाती थी व उससे पहले नहीं बनाई जाती थी । इसका अर्थ यह है कि श्रमिक की सेवा मुक्ति से पूर्व इस प्रकार के श्रमिकों की वरिष्ठता सूची तैयार होती थी किन्तु श्रमिक को सेवा मुक्ति के समय कोई वरिष्ठता सूची प्रकाशित नहीं की गई व न ही सेवा मुक्ति के मामले में वरिष्ठता का ध्यान रखा गया । नियोजक के गवाह ने शपथ पत्र में यह माना है कि घनश्याम पुत्र शंकरलाल अप्रैल 1987 में काम पर आया था जो अभी भी कार्यरत है । इससे भी यह प्रमाणित होता है कि श्रमिक की सेवा मुक्ति के समय उससे कनिष्ठ व्यक्तियों को काम पर रखा गया था । इसके अलावा विशिष्ट रूप से यह नहीं बताया गया है कि श्रमिक की सेवा मुक्ति के पश्चात उस कार्य के संबंध में अन्य किसी को नियोजित नहीं किया गया। जिरह में गवाह ने यह स्वीकार किया है कि राम लाल व नरपत सिंह वर्तमान श्रमिक से कनिष्ठ थे तथा इस बात की जानकारी नहीं होना बताया है कि 1-1-87 से 1990 के बीच नए श्रमिकों को नियुक्त किया गया हो । श्रमिक द्वारा बताए गए तथ्यों का विशिष्ट खण्डन नहीं करने व जानकारी के अभाव में अस्पष्ट बयान होने से नियोजक के खिलाफ यह धारणा ली जाना विधिक रूप से सही है कि श्रमिक की सेवा मुक्ति के पश्चात उस कार्य पर अन्य लोगों को भी रखा था । नियोजक के गवाह ने यह भी स्वीकार किया है कि नियोजक के पास नवम्बर 1987 में कार्य उपलब्ध था व उसके बाद भी यह कार्य चल रहा है । इन समस्त साक्ष्य व परिस्थितियों को देखते हुए यह विनिश्चय किया जाता है कि श्रमिक की सेवा मुक्ति के मामले में नियोजक द्वारा धारा-25जी व 25-एच अधिनियम के प्रावधानों की अवहेलना की गई है व इस आधार को भी सेवा मुक्ति के आदेश को वैधानिक नहीं माना जा सकता ।

12. श्रमिक ने अपने शपथ पत्र में यह बताया है कि वह सेवा मुक्ति के पश्चात लगातार बेरोजगार रहा है । जिरह में उसने यह कहा है कभी कभी मजदूरी मिलने पर वह मिस्त्री का काम करता है । अच्छी मजदूरी नहीं मिली । नियोजक के गवाह ने अपने शपथ पत्र में मात्र यह कहा है कि श्रमिक ने अपनी बेरोजगारी के संबंध में उन्हें सूचित नहीं किया इसके अलावा यह नहीं कहा है कि श्रमिक सेवा मुक्ति के पश्चात क्या काम करता है व उसकी आजीविका का साधन क्या है । श्रमिक ने अपनी जिरह में जिन तथ्यों को स्वीकार किया है उनसे यह धारणा लिया जाना न्यायोचित है कि वह उपलब्ध होने पर मजदूरी करता है व निश्चित रूप से उसके पास आय का कुछ न कुछ साधन है । निश्चित रूप से वह क्या कमाता है, कितनी अवधि तक उसने मजदूरी कार्य किया है व कितनी आय हुई है ऐसा उपलब्ध साक्ष्य से निर्णित नहीं किया जा सकता। श्रमिक को नियोजक द्वारा 1-11-87 से सेवा से हटाया गया था व उसके पश्चात उसने मौखिक व लिखित रूप से नियोजक को सेवा में लेने के लिए अनुरोध करना प्रमाणित किया है व मार्च 1990 में समझौता अधिकारी के समक्ष विवाद भी प्रस्तुत किया है । इसलिए समस्त परिस्थितियों को देखते हुए सेवा में पुनः बहाल की स्थिति में श्रमिक को बकाया वेतन का 50 प्रतिशत लाभ स्वीकृत किया न्यायसंगत प्रतीत होता है ।

13. निर्देशित विवाद में अधिनिर्णय इस प्रकार किया जाता है कि श्रमिक श्याम लाल ओझा की सेवा मुक्ति सब डिवीजनल आफीसर टेलीफोन्स भीलवाड़ा द्वारा 1-11-87 से करने की कार्यवाही अनुचित व अवैध है । इस आदेश के परिणामस्वरूप श्रमिक पुनः सेवा में आने का, सेवा की निरन्तरता बनाए रखने का व सेवा मुक्ति की तिथि से सेवा में आने की तिथि तक के पिछले बकाया वेतन व अन्य वित्तीय लाभ जो भी नियमानुसार देय होते हैं उनका 50 प्रतिशत लाभ प्राप्त करने का अधिकारी है ।

14. अवार्ड आज दिनांक 31-3-95 को लिखाया जाकर सुनाया गया जो केन्द्र सरकार को प्रकाशनार्थ नियमानुसार भेजा जावे ।

एन. एल. व्यास, पीठासीन अधिकारी

नई दिल्ली, 18 जनवरी, 1996

का. आ. 363—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार वेस्टर्न रेलवे के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, कोटा के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-1-96 को प्राप्त हुआ था।

[संख्या एल-41012/20/90—आई आर (बी आई)]

पी. जे. माईकल, डैस्क अधिकारी

New Delhi, the 18th January, 1996

S.O. 363.—In pursuance of Section II of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Kota as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Western Rly. and their workman, which was received by the Central Government on 17-1-1996.

[No. L-41012|20|90-IRBI]

P. J. MICHAEL, Desk Officer

अनुबन्ध

न्यायाधीश, औद्योगिक न्यायाधिकरण (केन्द्रीय) कोटा राज.

निर्देश प्रकरण क्रमांक : ओ. न्या. (केन्द्रीय) — 6/94

विनांक स्थापित : 28-9-94

प्रसंग : भारत सरकार, श्रम मंत्रालय, नई दिल्ली की आदेश क्रमांक एल. 41012/20/90-आई. आर. (डी. यू.) दिनांक 19-10-90

औद्योगिक विवाद अधिनियम, 1947

मध्य

बी. पी. सक्सेना द्वारा डिविजन सेक्रेट्री, पश्चिम रेलवे कर्मचारी परिषद्, भीमगंजमण्डी, कोटा।

—प्रार्थी श्रमिक

एवं

डिविजन रेलवे मैनेजर, वेस्टर्न रेलवे, कोटा डिविजन, कोटा।

—प्रतिपक्षी नियोजक

उपस्थित

श्री आर. के. चाचान,

आर. एच. जे. एम.

प्रार्थी श्रमिक की ओर से प्रतिनिधि : श्री ए. डी. ग्रोवर

प्रतिपक्षी नियोजक की ओर से प्रतिनिधि : श्री सी. एम. शर्मा

अधिनिर्णय दिनांक : 2-12-95

अधिनिर्णय

भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा निम्न निर्देश औद्योगिक विवाद अधिनियम, 1947 की धारा 10 (1) (घ) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है :—

"Whether the action of Divisional Railway Manager, Kota Division is justified in not giving seniority to Shri V. P. Saxena, Head Clerk in the Office of DRM. Kota w.e.f. 1-1-84 and not paying arrears to said workmen from 1-1-84 to 12-3-86 alongwith all consequential benefits ? If not, what relief the workman concerned is entitled to ?"

2. निर्देश न्यायाधिकरण में प्राप्त होने पर दर्ज रजिस्टर किया गया व पक्षकारों को सूचना जारी की गयी।

3. यह पत्रावली आज साक्ष्य प्रार्थी में नियत थी। प्रतिपक्षी की ओर से प्रतिनिधि स्वरूप श्री सी. एम. शर्मा उपस्थित हुए। प्रार्थी की ओर से श्री चतुर्भुज ने एक प्रार्थना-पत्र प्रस्तुत कर निवेदन किया कि श्री ए. डी. ग्रोवर अधिकृत प्रतिनिधि आवश्यक कार्य से बाहर गये हुए है, अतः समय दिया जावे। प्रतिपक्षी ने अपनी ओर से आपत्ति प्रकट करते हुए, कहा कि पत्रावली काफी लम्बे समय से साक्ष्य में चल रही है और आज अन्तिम अवसर प्रदान किया गया था। प्रार्थी स्वयं आज उपस्थित नहीं है और जो प्रार्थना-पत्र समय चाहने बाबत प्रस्तुत किया गया है है उसके समर्थन में कोई शपथ-पत्र या दस्तावेज भी प्रस्तुत नहीं किया गया जिससे कि प्रार्थना-पत्र पर गौर किया जा सके, अतः प्रार्थना-पत्र बाबत समय दिये जाने खारिज किया जाकर प्रार्थी की साक्ष्य बन्द की जाती है। तदुपरान्त प्रतिपक्षी की ओर से भी कोई साक्ष्य प्रस्तुत नहीं कर अपनी साक्ष्य समाप्त की गयी। बहस सुनी गयी व पत्रावली का अवलोकन किया गया जिससे प्रकट होता है कि प्रार्थी की ओर से क्लेम समर्थन में कोई साक्ष्य प्रस्तुत नहीं की गयी है जिससे कि उसके कथन की पुष्टि मानी जा सके, अतः साक्ष्य के अभाव में प्रार्थी कोई राहत प्राप्त करने का अधिकारी नहीं है और भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा सम्प्रेषित निर्देश को इसी प्रकार से उत्तरित किया जाता है।

इस अधिनिर्णय को समुचित सरकार को नियमानुसार प्रकाशनार्थ भिजवाया जावे।

आर. के. चाचान, न्यायाधीश

नई दिल्ली, 18 जनवरी, 1996

का. आ. 364—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस. बी. बी. जे. के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में, औद्योगिक अधिकरण, जयपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-1-96 को प्राप्त हुआ था।

[संख्या एल—12012/94/89—आई आर (बी आई)]

पी. जे. माईकल, डैस्क अधिकारी

New Delhi, the 18th January, 1996

S.O. 364.—In pursuance of Section II of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management S.B.B.J. and their workman, which was received by the Central Government on 17-1-1996.

[No. L-12012|94|89-IRBI]

P. J. MICHAEL, Desk Officer

अनुबंध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं. सी. आई. टी. 84/89

रैफरेंस : श्रम मंत्रालय, भारत सरकार, नई दिल्ली का आदेश क्र. एल—12012/94/89 आई. सी. (बी-3) दि. 11-8-89

श्री ओम प्रकाश अग्रवाल आत्मज श्री रामस्वरूप जी गुप्ता निवासी सिन्धी कॉलोनी पुलिस स्टेशन के पास, गंगापुर सिटी, जिला सवाई माधोपुर ।

—प्रार्थी

बनाम

प्रबन्ध निदेशक, मुख्यालय, स्टेट बैंक ऑफ बीकानेर एंड जयपुर, जयपुर ।

—अप्रार्थी

उपस्थित

माननीय न्यायाधीश श्री के. एल. व्यास, आर. एच. जे. एस.

प्रार्थी की ओर से : श्री मानसिंह गुप्ता

अप्रार्थी की ओर से : श्री एम. डी. अग्रवाल

दिनांक अवार्ड 1-8-95

अवार्ड

केन्द्र सरकार द्वारा निम्न विवाद अधिनिर्णय हेतु निर्देशित किया गया है :

"Whether the action of the management of State Bank of Bikaner and Jaipur in justified in accepting the resignation letter dated 28-01-86 of Shri Om Prakash Agarwal from 28-1-1986 ? If not, to what relief the workman is entitled to ?"

2. श्रमिक ने क्लेम में तथ्य अभिकथित किये हैं उनके अनुसार उसकी नियुक्ति विपक्षी बैंक में 18-1-83 को की गई थी व उसने 24-1-83 को ड्यूटी जोइन की थी व 24-7-83 से उसे स्थाई घोषित किया गया। श्रमिक की व्यथा यह है कि कुछ समय पश्चात् गंगापुर सिटी शाखा के स्टाफ के कुछ कर्मचारी उससे वैमनस्यता रखने लगे व परिणाम स्वरूप उसने अपने स्थानान्तरण का प्रार्थना पत्र प्रबन्धक को प्रस्तुत किया था। दिनांक 27-1-86 को बैंक की इस शाखा में अशोक कुमार गुप्ता ग्राहक के खाता सं. 4675 में से 8500/—रुपये कैलाश चन्द्र गुप्ता व बैंक के अन्य कर्मचारीगण द्वारा कूट रचना करके आहरित किये गये व इसका मिथ्या दोषारोपण प्रार्थी पर लगाया गया, इस संबंध में 28-1-86 को थाना गंगापुर सिटी में प्रथम सूचना भी दर्ज करवाई। श्रमिक के कथनानुसार इस रिपोर्ट पर अन्वेषण पश्चात् पुलिस ने प्रार्थी के खिलाफ कोई मामला होना नहीं पाया इसलिए न्यायालय से उसे अनुमोचित किया गया। 27-1-86 को कथित घटना के कारण शाखा के मैनेजर व अन्य कर्मचारियों ने रात को श्रमिक को बैंक में बुलाकर मारपीट की, प्रताड़ित किया व अनुचित दबाव देकर उनसे इस्तीफा 28-1-86 की तारीख में लिखवाया। इस प्रकार श्रमिक के अनुसार यह इस्तीफा उसने स्वेच्छा से नहीं दिया था व 29-1-86 को उसने रजिस्टर्ड डाक से शाखा मैनेजर व क्षेत्रीय प्रबन्धक को अपना इस्तीफा वापस लेने का पत्र भी भेजा किन्तु इसके बावजूद 31-1-86 के पत्र से उसे सेवा मुक्त करने की सूचना दी गई। श्रमिक ने प्रबन्धक को इस्तीफा स्वीकार करने की कार्यवाही को इस आधार पर चुनौती दी है कि उसके द्वारा कथित इस्तीफा शाखा मैनेजर को दिया गया था जबकि इसके लिए सक्षम अधिकारी क्षेत्रीय प्रबन्धक है तथा शास्त्री अवार्ड के प्रावधान के अनुसार इस्तीफा के लिए एक माह की नोटिस आवश्यक है किन्तु इस प्रावधान की अवहेलना में प्रबन्धक द्वारा तत्काल प्रभाव से श्रमिक का इस्तीफा स्वीकार किया गया। अनुतोष यह मांगा गया है कि श्रमिक का इस्तीफा 31-1-86 के पत्र से स्वीकृत करने की कार्यवाही अवैध व अनुचित मानते हुए श्रमिक को 28-1-86 से पुनः सेवा में रखने का आदेश प्रबन्धक को दिया जावे व बीच की अवधि का समस्त वेतन व अन्य लाभ स्वीकृत किये जावें। क्लेम में यह भी अभिकथित किया गया है कि 27-1-86 की घटना के परिणामस्वरूप श्रमिक का इस्तीफा प्रबन्धक द्वारा दण्डस्वरूप कार्यवाही के तहत स्वीकार किया गया है जबकि इस संबंध में दुर्व्यवहरण बाबत कोई भी साक्ष्य नियोजक द्वारा प्रस्तुत नहीं की गई है।

3. नियोजक की ओर से प्रस्तुत जवाब में श्रमिक की नियुक्ति व स्थाईकरण की तिथि को संबंधित समय गंगापुर सिटी शाखा में उसकी पदस्थापना के तथ्य को स्वीकार किया गया है। किसी भी कर्मचारी या अधिकारी द्वारा किसी भी कारण श्रमिक से द्वेषता रखने के तथ्य को गलत बताते हुए यह अभिकथित किया गया है श्रमिक ने विधि के अध्ययन हेतु अपना स्थानान्तरण करवाने के लिए प्रार्थना पत्र प्रस्तुत किया था। दिनांक 27-1-86 को बैंक से ग्राहक के खाते से फर्जी भुगतान आहरित होने की घटना को स्वीकार करते हुए जवाब में यह बताया गया है कि उस संबंध में पुलिस में रिपोर्ट कानूनी कार्यवाही के लिए की गई थी तथा 27-1-86 की घटना में प्रथम दृष्टया श्रमिक के लिप्त होने के तथ्य थे तथा वह उस रोज दोपहर 2.30 बजे शाखा प्रबन्धक की अनुमति के बिना चला गया था जिसके लिए नोटिस भी उसे दिया गया था। 28-1-86 का इस्तीफा श्रमिक द्वारा स्वेच्छा से हस्ताक्षर करके पंजीकृत पत्र से शाखा मैनेजर को भेजना जवाब में बताया गया है। इन तथ्यों को काल्पनिक बताया गया है कि श्रमिक को 27-1-86 की घटना के बाद किसी अधिकारी या कर्मचारी द्वारा मारपीट की गई या अन्य किसी प्रकार से उस पर कोई दबाव डाला गया। यह इस्तीफा क्षेत्रीय प्रबन्धक द्वारा 31-1-86 के पत्र से 29-1-86 से स्वीकार करना बताया गया है व कारण यह बताया गया है कि श्रमिक ने 28-1-86 से ही स्वेच्छा से ड्यूटी पर आना बंद कर दिया था। इस्तीफा पुनः वापस लेने का पत्र शाखा में प्राप्त होना जवाब में स्वीकार किया गया है किन्तु प्रतिरक्षा यह ली गई है कि उससे पूर्व ही इस्तीफा स्वीकार कर लिया गया था। शाखा मैनेजर को इस्तीफा संबोधित होने बाबत यह विधिक प्रतिरक्षा ली गई है कि पत्र व्यवहार के लिए शाखा प्रबन्धक ही माध्यम है व इसके द्वारा इस्तीफा क्षेत्रीय प्रबन्धक को अग्रेषित किया गया था जो उसे स्वीकार करने के लिए सक्षम अधिकारी है। शास्त्री अवार्ड के अनुसार इस्तीफा करने के लिए किसी कर्मचारी द्वारा एक माह के नोटिस की शर्त के लिए यह प्रतिरक्षा ली गई है कि इस शर्त की अनुपालना करने के अधिकार को बैंक द्वारा अपने विवेक से परित्याग किया जा सकता है इसलिए प्रबन्धक द्वारा तुरन्त प्रभाव से श्रमिक का इस्तीफा स्वीकार करने की कार्यवाही अवैधानिक नहीं है।

4. मौखिक साक्ष्य में श्रमिक की ओर से उसका स्वयं का शपथ पत्र प्रस्तुत किया गया है तथा नियोजक की ओर से पहले एक गवाह श्री आर. डी. बुग्गल का शपथ पत्र प्रस्तुत किया गया था किन्तु उन्हें जिरह में प्रस्तुत नहीं किया गया इसलिए यह शपथ पत्र साक्ष्य में ग्राह्य नहीं है व न ही इस संबंध में कोई बहस की गई है। इसके अतिरिक्त एक गवाह श्री बी. बी. खन्ना का शपथ पत्र नियोजक की ओर से प्रस्तुत किया गया है। श्रमिक ने अपने अभिकथन के समर्थन में प्रदर्श डब्ल्यू—1 से प्रदर्श डब्ल्यू—3 प्रवेश प्रस्तुत किये हैं जबकि नियोजक की ओर से प्रदर्श एम—1 से एम—5 प्रवेश प्रस्तुत किये गये हैं। बहस दोनों पक्षों की सुनी गई। श्रमिक यूनियन की ओर से बहस के समर्थन में कुछ निर्णय प्रस्तुत किये गये हैं जिन पर बाद में विचार किया जायेगा।

5. दोनों पक्षों के अधिकथनों में जो मतभेद हैं उनको देखते हुए विनिश्चय हेतु निम्न बिन्दु बनाये जाते हैं ।

1. आया श्रमिक द्वारा 28-1-86 को इस्तीफा बैंक अधिकारी व कर्मचारियों द्वारा मारपीट करने अथवा प्रपीड़न करने या अन्य अनुचित प्रभाव के कारण दिया गया ।

2. आया श्रमिक ने अपने उक्त त्याग पत्र को प्रत्याहरित करने का प्रार्थना पत्र उचित समय पर प्रस्तुत कर दिया था व उसका मामले के अधिनिर्णय पर क्या प्रभाव है ?

3. आया श्रमिक द्वारा स्तीफा सक्षम अधिकारी को प्रस्तुत नहीं किया गया व उसका क्या प्रभाव है ?

4. आया श्रमिक का स्तीफा शास्त्री अवार्ड के नोटिस के प्रावधान के विपरीत प्रबन्धक द्वारा अवैधानिक रूप से स्वीकार किया गया ?

6. श्रमिक ने बैंक अधिकारी व कर्मचारियों द्वारा मारपीट करने, उत्पीड़ित करने व अनुचित प्रभाव डालने के संबंध में अपने शपथ पक्ष में उन्हीं तथ्यों की पुनरावृत्ति की है जो क्लेम में वर्णित किए गये है। उनका सार यह है कि 27-1-86 के बचत खाते से फर्जी भुगतान की घटना के कारण उस रोज शाम के समय शाखा में बुलाकर उसके साथ निर्दयतापूर्वक पिटाई की गई व इस कार्यवाही में बैंक के तत्कालीन प्रबन्धक कैशियर हरगोविन्द मीणा शामिल थे व उन्होंने श्रमिक से स्तीफा प्राप्त करने के लिए अनुचित दबाव डाला। मारपीट व अनुचित धमकी के कारण उसने उन व्यक्तियों के कहे अनुसार इस्तीफे पर हस्ताक्षर किये जबकि उसे यह जानकारी वास्तविक रूप में नहीं थी कि उसने बैंक को क्या लिखकर दिया है। बैंक के अकाउन्टेंट के. सी. जैन का भी उस घटना में शामिल होना बताया गया है। इस संबंध में नियोजक द्वारा जो जिरह की गई उसमें प्रार्थी ने यह स्वीकार किया है कि क्लेम में उसने मारपीट करने वाले व अनुचित दबाव डालने वाले व्यक्तियों हरगोविन्द मीणा, ए.पी. जिन्दल, के. सी. जैन व श्री. बी. खन्ना के नाम नहीं लिखवाये थे। क्लेम के पठन से यह स्पष्ट है कि किसी भी कर्मचारी या अधिकारी का नाम उल्लिखित नहीं है व एक सामान्य अभिकथन मारपीट के बाबत किया हुआ है। इस महत्वपूर्ण क्लेम की कमी का कोई भी उचित स्पष्टीकरण श्रमिक द्वारा न्यायाधिकरण के समक्ष प्रस्तुत नहीं किया गया है। कैलाश चन्द्र गुप्ता द्वारा मारपीट करना व 8500 रुपये के फर्जी भुगतान बाबत अभिस्वीकृति लिखकर देने के लिए दबाव डालने की बात जिरह में श्रमिक ने कही है परन्तु यह तथ्य भी क्लेम में उल्लिखित नहीं है। इसके अतिरिक्त यह बताया गया है कि मारपीट में करीब 15 व्यक्ति शामिल थे जिन्होंने 10–15 मिनट मारपीट की थी व उससे प्रार्थी बेहोश भी हो गया था व उसे अगले दिन सुबह होश आया था। यह तमाम तथ्य भी क्लेम में अभिकथित नहीं हैं । मारपीट की इस घटना बाबत पुलिस में प्रथम सूचना लिखवाना प्रार्थी ने जिरह में कहा है किन्तु न तो इस रिपोर्ट की कोई नकल प्रस्तुत हुई है व न ही क्लेम में इन तथ्यों का उल्लेख किया हुआ है। इस साक्ष्य के खण्डन में नियोजक की ओर से प्रस्तुत गवाह श्री बी.बी. खन्ना ने इन तथ्यों को स्पष्टतः अस्वीकार करते हुए यह कहा है कि श्रमिक ने अपना इस्तीफा स्वेच्छा से 28-1-86 को पंजीकृत डाक से भेजा था। जिरह जो गवाह श्री खन्ना से हुई है उसमें इस संबंध में कोई भी प्रश्न नहीं पूछे गये हैं इसलिए जो तथ्य उन्होंने अपने मुख्य बयान में दिये हैं उन पर अविश्वास करने का कोई कारण नहीं हो सकता। श्रमिक की ओर से अन्य कोई भी मौखिक अथवा परिस्थितिक साक्ष्य मारपीट अथवा प्रपीड़न के बाबत प्रस्तुत नहीं की गई है। क्लेम में जो कमियां इस संबंध में उदर्शित की गई हैं उनको व दोनों पक्षों की साक्ष्य को देखते हुए श्रमिक की साक्ष्य पर विश्वास करने का तर्कसंगत कारण उपलब्ध नहीं होता है।

6. श्रमिक ने अपने बयान में इस्तीफा बैंक कर्मचारियों द्वारा 27-1-86 को लिखवाकर, प्रस्तुत करने का अभिकथन किया है जबकि बैंक के जवाब में व श्री खन्ना के बयान में यह बताया गया है कि 28-1-86 की तारीख का हस्ताक्षरित इस्तीफा शाखा में पंजीकृत डाक से श्रमिक ने भेजा था जो शाखा में प्राप्त हुआ था। पंजीकृत डाक से इस्तीफा भेजने के तथ्य का खण्डन रजोइन्डर अथवा साक्ष्य के जरिये श्रमिक द्वारा नहीं किया गया है । श्रमिक द्वारा प्रस्तुत लेख है इस्तीफे का प्रतिलिपि प्रदर्श-एन-1 नियोजक द्वारा प्रस्तुत के जिस पर 28-1-86 की तारीख श्रमिक द्वारा दर्ज की हुई है व बैंक में प्राप्ति की तारीख 29-1-86 अंकित की हुई है। इस स्तीफे में यह उल्लेख है कि घरेलू परिस्थितियों के कारण प्रार्थी नौकरी में रहने के लिये असमर्थ है। मारपीट की घटना व जबर्दस्ती इस्तीफा प्राप्त करने के बाद श्रमिक द्वारा किसी भी अधिकारी को कोई भी शिकायत प्रस्तुत करना नहीं बताया गया है। इसके अलावा श्रमिक ने अपने क्लेम व साक्ष्य में यह बताया है कि उसने 19-1-86 को स्तीफा वापस लेने का आवेदन प्रबन्धक को भेजा था किन्तु उसकी प्रतिलिपि की इस पत्रावली पर उपलब्ध नहीं है व न ही श्रमिक ने इसे तलब करवाने के लिये कोई अनुरोध किया है। यदि इस्तीफा वापस लेने का प्रार्थना पत्र प्रस्तुत किया जाता तो उससे यह ज्ञात होता है कि उसमें श्रमिक द्वारा इस्तीफा वापस लेने का क्या कारण बताया गया है । इसके अभाव में उपधारणा श्रमिक के कथन के विपरीत लिया जाना न्यायोचित है।

7. नियोजक के जवाब में यह बताया गया है कि 27-1-86 को हुए फर्जी भुगतान की घटना के पश्चात् श्रमिक दोपहर बाद बैंक से बिना अनुमति अनुपस्थित हो गया था व उस तथ्य का खण्डन रोजोइन्डर के जरिये श्रमिक द्वारा नहीं किया गया है। नियोजक के गवाह श्री खन्ना ने अपने शपथ पत्र में यह बताया है कि बिना अनुमति शाखा छोड़ने के संबंध में श्रमिक से उसी रोज स्पष्टीकरण मांगा गया था जिसका जवाब श्रमिक ने प्रस्तुत नहीं किया। इस तथ्य पर कोई जिरह श्री खन्ना से नहीं हुई है । स्पष्टीकरण के संबंध में श्रमिक को प्रेषित पत्र की प्रतिलिपि नियोजक ने प्रस्तुत नहीं की है किन्तु श्रमिक द्वारा कोई रोजोइन्डर प्रस्तुत नहीं होना व श्री खन्ना से कोई जिरह नहीं होने के कारण इस तथ्य को साबित माना जाता है कि उससे यह प्रकट होता है कि 27-1-86 को घटना के बाद श्रमिक के मन में कोई अशांति थी व इसी कारण वह बिना अनुमति बैंक छोड़कर चला गया था व इसके आगे दोनों पक्षों की साक्ष्य से यह मानने का भी आधार बनता है कि उसके बाद वह अपनी ड्यूटी पर कभी भी उपस्थित नहीं हुआ।

8. दोनों पक्षों की ओर से प्रस्तुत मौखिक व प्रलेखीय साक्ष्य तथा सुसंगत परिस्थितियों के विवेचन के परिणामस्वरूप यह अभिनिर्धारित किया जाता है कि श्रमिक द्वारा 28-1-86 को अपना इस्तीफा शाखा प्रबन्धक के समक्ष पंजीकृत डाक से स्वेच्छा से भेजा गया था । श्रमिक यूनियन की ओर से एक निर्णय मस्तराम भाटी बनाम भारत संघ व अन्य एस. एस.आर. 1993(8) (एच.पी.) प्रस्तुत किया गया है । इसमें यह प्रतिपादित किया गया है कि किसी भी कर्मचारी द्वारा अपना इस्तीफा प्रस्तुत करते समय मानसिक रूप से संतुलित होना आवश्यक है व यदि साक्ष्य और परिस्थितियों से यह प्रकट हो कि उसने किसी भी मानसिक वेदना अथवा अन्य किसी असामान्य मानसिक स्थिति के कारण इस्तीफा दिया है तो उसे स्वेच्छा से दिया गया इस्तीफा नहीं माना जा सकता । जो साक्ष्य इस प्रकरण में विवेचित की गई है उसे देखते हुए यह मानने का कोई आधार नहीं बनता कि श्रमिक द्वारा मानसिक असंतुलन या अन्य किसी मानसिक अस्वस्थता या परेशानी के कारण बिना सोचे समझे स्तीफा नियोजक को प्रस्तुत किया गया है । एक तथ्य

यह भी उल्लेखनीय है कि श्रमिक ने जो विशिष्ट अभिकथन नियोजक पक्ष के अधिकारी व कर्मचारियों द्वारा मारपीट करने व प्रताड़ित करने के संबंध में अभिकथित किये है वे पूर्ण रूप से अस्वीकार किये जाने योग्य हैं इसलिये इस आधार पर भी श्रमिक को मानसिक बीमारी या असंतुलन की कोई धारणा लिया जाना संभव नहीं है।

9. श्रमिक ने अपने क्लेम व शपथ पत्र में यह तथ्य प्रकट किया है कि पंजीकृत डाक से उसने अपना स्तीफा वापस लेने का पत्र 29-1-86 को शाखा प्रबन्धक, गंगापुर सिटी, क्षेत्रीय प्रबन्धक जयपुर व एम.एच.ओ. गंगापुर सिटी को भेजा था। इसके संदर्भ में बैंक द्वारा उसे यह सूचित किया गया कि श्रमिक का स्तीफा पूर्व में स्वीकार किया जा चुका है इसलिये उस पत्र पर पुनः विचार करने का कोई आधार नहीं है। यह पत्र डब्ल्यू-2 प्रस्तुत किया गया है जो क्षेत्रीय प्रबन्धक द्वारा श्रमिक को 8-2-86 को भेजा गया है। श्रमिक के शपथ पत्र पर जो जिरह हुई है उसमें उसने यह बताया है कि उसका इस्तीफा 31-3-86 को स्वीकृत हुआ था जबकि उसने स्तीफा वापस लेने का पत्र 29-1-86 को भेज दिया था। श्रमिक का स्तीफा बैंक से स्वीकृत होने का पत्र प्रदर्श डब्ल्यू-1 है जो 31-3-86 का है व उसमें 29-1-86 से इस्तीफा प्रभावी होना सूचित किया गया है। इस्तीफा वापस लेने का पत्र या उसकी प्रतिलिपि किसी भी पक्ष की ओर से न्यायाधिकरण के समक्ष प्रस्तुत नहीं की गई है। नियोजक के जवाब में व उनकी ओर से प्रस्तुत गवाह श्री बी.बी. खन्ना के शपथ पत्र में यह बताया गया है कि श्रमिक का त्याग पत्र वापस लेने का पत्र बैंक में इस्तीफा स्वीकृत होने के बाद प्राप्त हुआ था इसलिये उस पर विचार किया जाना विधिक रूप से संभव नहीं था। दोनों पक्षों की ओर से प्रस्तुत शपथ पत्र व प्रदर्श एम-1 इस्तीफे के पत्र व प्रदर्श डब्ल्यू-1 इस्तीफा स्वीकृत होने के पत्र से यह तथ्य स्पष्ट है कि शाखा मैनेजर को इस्तीफे का पत्र 29-1-86 को प्राप्त हुआ था 31-1-86 के पत्र के जरिये श्रमिक को 29-1-86 से स्तीफा स्वीकृत करने की सूचना दी गई किन्तु इसके अलावा नियोजक की ओर से यह साक्ष्य या रिकार्ड के आधार पर नहीं बताया गया है कि शाखा मैनेजर द्वारा प्रदर्श एम-1 पत्र क्षेत्रीय प्रबन्धक को किस तिथि को अग्रेषित किया गया, क्षेत्रीय प्रबन्धक द्वारा पत्र एम-1 कब प्राप्त किया गया, उस पत्र पर इस्तीफा स्वीकृत करने का निर्णय पत्रावली पर किस तिथि को लिया गया अतः यह तथ्यात्मक रूप से नियोजक ने प्रमाणित नहीं किया है कि वास्तव में इस्तीफा क्षेत्रीय प्रबन्धक को कब प्राप्त हुआ व उसे स्वीकार करने का निर्णय कब लिया गया। नियोजक के जवाब में यह स्वीकार किया गया है इस्तीफा वापस लेने का पत्र शाखा मैनेजर को पंजीकृत डाक से प्राप्त हो गया था। यह पत्र शाखा प्रबन्धक द्वारा किस तिथि को अग्रेषित किया गया, क्षेत्रीय प्रबन्धक को वह कब प्राप्त हुआ, व उस पर क्या कार्यवाही की गई, इसका रिकार्ड नियोजक द्वारा प्रस्तुत नहीं किया गया है व मात्र प्रदर्श डब्ल्यू-1 पत्र पत्रावली पर है जिसके अनुसार 29-1-86 से स्तीफा स्वीकार करने की सूचना श्रमिक को भेजी गई है। नियोजक के जवाब में इन तथ्यों का विशिष्ट रूप से खण्डन नहीं किया गया है। इस्तीफा वापस लेने का पत्र पंजीकृत डाक से क्षेत्रीय प्रबन्धक को भी भेजा गया था इसलिये श्रमिक के शपथ पत्र पर जो साक्ष्य प्रस्तुत हुई है उसे देखते हुए यह तथ्य प्रमाणित माना जाता है कि शाखा मैनेजर के अलावा क्षेत्रीय प्रबन्धक को भी इस्तीफा वापस लेने का पत्र श्रमिक द्वारा भेजा गया था। यह पत्र सीधे क्षेत्रीय प्रबन्धक को कब प्राप्त हुआ, व उस पर क्या कार्यवाही की गई ऐसा कोई भी नियोजक ने साक्ष्य में साबित नहीं किया है। प्रदर्श डब्ल्यू-2 पत्र 8-2-86 का है जिसके जरिये श्रमिक को यह सूचित किया गया है कि चूंकि उसका इस्तीफा पूर्व में स्वीकार किया जा चुका है इसलिये इस्तीफा वापस लेने के पत्र पर पुनः विचार करने का प्रश्न उत्पन्न नहीं होता। इस पत्र में भी यह तथ्य उल्लिखित नहीं है कि इस्तीफा स्वीकार करने का निर्णय प्रबन्धक द्वारा कब लिया गया तथा इस्तीफा वापस लेने का पत्र क्षेत्रीय प्रबन्धक को किस तिथि को प्राप्त हुआ।

10. पूर्व विवेचित तथ्यों के प्रकाश में श्रमिक यूनियन के विद्वान प्रतिनिधि ने यह तर्क दिया है कि मान्य विधि सिद्धान्तों के अनुसार नियोजक द्वारा स्तीफा स्वीकार करने का निर्णय लेने से पूर्व श्रमिक द्वारा अपना इस्तीफा किसी भी प्रक्रम पर वापस लिया जा सकता है यह तुरन्त प्रभाव से हो अथवा किसी अवधि का वर्णन किया हुआ नहीं हो। उनका यह भी तर्क है कि श्रमिक द्वारा यह तथ्य साबित करने के पश्चात् उसने इस्तीफा वापस लेने का पत्र नियोजक को भेज दिया था, यह साबित करने का प्रमाण भार नियोजक पर चला जाता है कि इस्तीफा स्वीकृत होने के पश्चात् उन्हें कर्मचारी का वह पत्र प्राप्त हुआ था व चूंकि इस प्रकार की साक्ष्य नियोजक ने प्रस्तुत नहीं की है इसलिये यह धारणा लेना न्यायोचित है कि श्रमिक का इस्तीफा स्वीकृत करने के निर्णय से पूर्व उसे वापस लेने का पत्र नियोजक को प्राप्त हो गया था व ऐसी स्थिति में श्रमिक का इस्तीफा स्वीकृत करने की कार्यवाही वैध नहीं हो सकती, इस संबंध में उन्होंने जो विधि दृष्टान्त प्रस्तुत किये है वे निम्न प्रकार हैं :

1. बलराम गुप्ता बनाम भारत संघ व अन्य ए.आई.आर. 1987 (एम.सी.) 2354

2. पंजाब नेशनल बैंक बनाम पी.के. मिसल एस.एल.आर. 1989 (1), एस.सी. 596

3. लोक कल्याण समिति बनाम राजेन्द्र प्रसाद सिंह एस.एल.जे. 1980 (इलाहाबाद) 705

4. डा. रजनीकान्त एम. जरी वाला बनाम गोवा दमन दयू प्रशासन एल. एल. जे. 1976 (गोआ) 666

11. उक्त सभी संदर्भित विधि दृष्टान्तों में यह प्रतिपादित किया गया है कि किसी भी कर्मचारी द्वारा सेवा निवृत्ति अथवा त्याग पत्र का नोटिस उस नोटिस को निर्धारित अवधि समाप्त होने से पूर्व प्रत्याहरित किया जा सकता है तथा यदि किसी त्याग पत्र के नोटिस में कोई तिथि अंकित नहीं हो अथवा वह तुरन्त प्रभाव से हो तो भी उसकी स्वीकृति से पूर्व कर्मचारी द्वारा अपने स्तीफे के पत्र को वापस लिया जा सकता है। संविदा अधिनियम के प्रावधान के तहत भी कर्मचारी द्वारा अपना इस्तीफा नियोजक द्वारा स्वीकृति से पूर्व प्रत्याहरित किया जा सकता है। चूंकि इस प्रकरण में मौखिक व प्रालेखीय साक्ष्य से यह प्रमाणित नहीं है कि श्रमिक का इस्तीफा वापस लेने का पत्र नियोजक को इस्तीफे को स्वीकृति के बाद प्राप्त हुआ इसलिए स्तीफा स्वीकृत करने की कार्यवाही अनुचित व अवैधानिक है। नियोजक द्वारा प्रदर्श एम-1 व एम-5 पत्रों की प्रतिलिपि प्रस्तुत की गई है जो श्रम आयुक्त व केन्द्रीय सरकार ने श्रम विभाग को भेजे गये हैं व उनमें भी यह उल्लिखित है कि शास्त्री अवार्ड के संबंधित प्रावधान के अनुसार इस्तीफे के लिए एक माह के नोटिस की जो शर्तें हैं वह नियोजक द्वारा अपने विवेक पर छोड़ी जा सकती है। श्रमिक ने इस्तीफा स्वीकृत करने की कोई तारीख या अवधि नहीं दी थी इसलिए उसका इस्तीफा 31-1-86 के पत्र से 29-1-86 से स्वीकार किया गया क्योंकि उस तिथि से कर्मचारी ने बैंक में आना बंद कर दिया था। इन पत्रों में कहीं भी यह उल्लेख नहीं है कि श्रमिक का स्तीफा क्षेत्रीय प्रबन्धक को कब प्राप्त हुआ, उसे स्वीकार करने का निर्णय जिस तिथि को लिया गया व श्रमिक द्वारा इस्तीफे को वापस लेने का जो पत्र भेजा गया वह क्षेत्रीय प्रबन्धक को कब प्राप्त हुआ। अतः इन पत्रों से भी यह स्थिति नियोजक के पक्ष में नहीं होती कि श्रमिक ने इस्तीफा वापस लेने का पत्र जो भेजा था वह क्षेत्रीय प्रबन्धक को इस्तीफा स्वीकार करने के बाद प्राप्त हुआ। अतः इस बिन्दु के संबंध में विनिश्चय इस प्रकार किया जाता है कि श्रमिक द्वारा अपना इस्तीफा उचित समय पर वापस ले लिया गया था इसलिए नियोजक द्वारा प्रदर्श डब्ल्यू-1 पत्र के जरिये इस्तीफा स्वीकृत करने की कार्यवाही उचित व वैधानिक नहीं है।

12. दोनों पक्षों को मौखिक व प्रालेखीय साक्ष्य पर पूर्व में जो विचार किया गया है उससे यह तथ्यात्मक स्थिति स्पष्ट प्रमाणित है कि श्रमिक ने अपना इस्तीफा शाखा प्रबन्धक को नियोजक के विरुद्ध व उसी के द्वारा

यह इस्तीफा क्षेत्रीय प्रबन्धक को उचित कार्यवाही हेतु अग्रेषित किया गया था। इस्तीफे की प्रतिलिपि प्रदर्श एम–1 है। दोनों पक्षों की साक्ष्य व बहस में यह स्थिति भी स्वीकार की गई है कि श्रमिक का स्तीफा स्वीकार करने के लिए क्षेत्रीय प्रबन्धक ही सक्षम अधिकारी है। इसके आगे श्रमिक की ओर से यह बहस की गई है कि चूंकि स्तीफा सक्षम अधिकारी को संबोधित नहीं है इसलिए क्षेत्रीय प्रबन्धक द्वारा उस पर कोई भी कार्यवाही करना वैधानिक नहीं हो सकता तथा क्षेत्रीय प्रबन्धक के लिए मात्र यह विकल्प उपलब्ध था कि श्रमिक का स्तीफा वापस उसे भेजा जाता। बैंक की ओर से जवाब व शपथ पत्र में यह बताया गया है कि चूंकि पत्र व्यवहार शाखा मैनेजर के माध्यम से होता है इसलिए उनके द्वारा श्रमिक के इस्तीफे को अग्रेषित करने व उसी को क्षेत्रीय प्रबन्धक द्वारा स्वीकार करने की कार्यवाही पूर्ण रूप से उचित है। विधि दृष्टान्त कोई भी नियोजक की ओर से प्रस्तुत नहीं किया गया है। श्रमिक यूनियन की ओर से इस संबंध में डॉ रजनी कान्त बनाम गोआ, दमन, दीव प्रशासन एस. एल. जे. 1976 (गोआ) 666 का निर्णय प्रस्तुत किया गया है। इसमें यह प्रतिपादित किया गया है कि नियुक्ति अधिकारी के अलावा उससे नीचे के अधिकारी को संबोधित त्याग पत्र प्रारंभिक रूप से अवैध है इसलिए, इस प्रकार के इस्तीफे को स्वीकृत करने की कार्यवाही को उचित नहीं ठहरा जा सकता। यह निर्णय जुडीशियल कमिश्नर, गोआ दमन दिव का है व इसके अलावा किसी भी पक्ष की ओर से कोई निर्णय प्रस्तुत नहीं किया गया है। लॉ ऑफ प्रोसीडेन्स के अनुसार यह न्यायाधिकरण उक्त निर्णय को मानने के लिए बाध्य नहीं है तथा जिस प्रकार के तर्क उक्त निर्णय में दिये गये है उन्हें देखते हुए यह तर्क श्रमिक का स्वीकार नहीं किया जा सकता कि इस्तीफा शाखा प्रबन्धक को संबोधित होने के कारण क्षेत्रीय प्रबन्धक द्वारा उसे स्वीकार करने की कार्यवाही नहीं की जा सकती थी। यह सही है कि श्रमिक का नियुक्ति अधिकारी व त्यागपत्र स्वीकार करने के लिए सक्षम अधिकारी क्षेत्रीय प्रबन्धक है तथा इस्तीफा स्वीकार करने की कार्यवाही भी उन्हीं के द्वारा श्रमिक के पत्र पर की गई है इसलिए मात्र शाखा प्रबन्धक को किये गये संबोधन के कारण इस्तीफे को अवैध या शून्य नहीं माना जा सकता।

13. दोनों पक्षों ने बहस में यह स्वीकार किया है कि स्थाई कर्मचारी को सेवा त्याग करने के लिए एक माह का नोटिस शास्त्री अवार्ड के अनुसार नियोजक को देना आवश्यक है व यदि इसके विपरीत तुरन्त प्रभाव से श्रमिक द्वारा इस्तीफा प्रस्तुत किया जाता है तो उस स्थिति में एक माह का वेतन जमा कराना उसके लिए आज्ञापक है। शास्त्री अवार्ड के प्रावधान में यह भी उल्लेख है कि एक माह के नोटिस की शर्त को नियोजक द्वारा विशिष्ट परिस्थितियों में अपने विवेक के अनुसार छोड़ा जा सकता है तथा इस प्रकरण में भी नियोजक द्वारा यह प्रतिरक्षा ली गई है कि चूंकि श्रमिक का इस्तीफा तुरंत प्रभाव से था इसलिए परिस्थितियों को देखते हुए एक माह के नोटिस के अभाव में भी नियोजक द्वारा अपने विवेक के अनुसार इस्तीफा स्वीकृत करने की कार्यवाही की गई थी। एक माह के नोटिस के बिना इस्तीफा स्वीकृत करने की स्थिति में श्रमिक के हितों पर कोई भी प्रतिकूल प्रभाव नहीं हो सकता क्योंकि यह प्रावधान बैंक के हित सुरक्षित करने के लिए व प्रशासनिक दृष्टि से असुविधा को समाप्त करने के लिए बनाया गया है व यदि बैंक अपने विधिक हितों के विपरीत इस्तीफा स्वीकृत करने की कार्यवाही करता है तो उस आधार पर इस कार्यवाही को अनुचित व अवैध नहीं माना जा सकता। श्रमिक की ओर से इस संबंध में कोई भी निर्णय प्रस्तुत नहीं किया गया है। अतः इस संबंध में बनाये गये बिन्दु का विनिश्चय श्रमिक के विपरीत किया जाता है।

14. श्रमिक ने अपने क्लेम में व साक्ष्य में यह अभिकथित किया है कि वह इस्तीफा स्वीकृत होने के पश्चात् निरन्तर बेरोजगार है इसलिए उसे समस्त बकाया वेतन भी सेवा में बहाली की स्थिति में स्वीकृत किया जाये। श्रमिक की साक्ष्य पर कोई भी जिरह नियोजक द्वारा नहीं की गई है व नियोजक के गवाह श्री बी.बी. खन्ना ने अपने शपथ पत्र में यह बताया है कि बैंक से त्यागपत्र के पश्चात् प्रार्थी लगातार अन्य जगह कार्य करके पर्याप्त राशि कमा रहा है। जिरह में उन्होंने यह बताया है कि प्रार्थी के पिता की कपड़े की दुकान गंगापुर सिटी में है जहां श्रमिक नौकरी करता है व यह तथ्य स्वयं श्रमिक ने ही उन्हें बताया था। इसके आगे उन्होंने यह भी कहा है कि श्रमिक से उन्होंने यह नहीं पूछा कि उसे इस नौकरी के परिणामस्वरूप क्या वेतन मिलता है। गवाह के शपथ पत्र में श्रमिक द्वारा अपने पिता की दुकान पर काम करने का उल्लेख नहीं है व मात्र यह बताया गया है कि श्रमिक अन्यत्र कार्य करता है। इसके अलावा भी श्री खन्ना ने अन्यत्र काम करने बाबत जो साक्ष्य दी है वह प्रत्यक्ष साक्ष्य की परिभाषा में नहीं आती है, श्रमिक के शपथ पत्र पर जिरह में ऐसा सुझाव नहीं दिया गया है व इसके समर्थन में नियोजक द्वारा अन्य कोई साक्ष्य नहीं दी गई है इसलिए निश्चित रूप से यह मानने का आधार नहीं है कि श्रमिक अन्य जगह क्या नौकरी करता है व उससे कितनी आय उसे होती है। सामान्यतः सेवा में पुनः बहाली की स्थिति में अन्य आय स्त्रोतों की साक्ष्य के अभाव में समस्त बकाया वेतन श्रमिक को स्वीकृत किया जाना चाहिये किन्तु वर्तमान प्रकरण सेवा मुक्ति से संबंधित नहीं है व कथित रूप से अवैधानिक रूप से त्याग पत्र स्वीकृत करने के कारण श्रमिक को सेवा से वंचित होना पड़ा है। यह तथ्य भी साबित माना गया है कि श्रमिक ने अपना त्याग पत्र स्वेच्छा से नियोजक को प्रेषित किया था व त्याग पत्र स्वीकार करने की कार्यवाही तकनीकी रूप से अवैधानिक मानी गई है इसलिए इस प्रकरण में काम नहीं वेतन नहीं के सिद्धांत पर बकाया कोई भी वेतन श्रमिक को स्वीकृत करना न्यायोचित प्रकट नहीं होता। यह भी एक न्यायिक धारणा का सामान्य विषय है कि कोई भी जवाब व शारीरिक रूप से सक्षम व्यक्ति बिना कारण बेरोजगार नहीं रहता तथा पारिवारिक व्यक्ति को निश्चित रूप से आय का साधन करना आवश्यक व स्वाभाविक है।

15. निर्देशित विवाद का अधिनिर्णय इस प्रकार किया जाता है कि श्रमिक श्री प्रकाश अग्रवाल का त्याग पत्र दिनांक 28-1-86 से प्रबन्धक द्वारा स्वीकार करने की कार्यवाही अनुचित व अवैध है व परिणामस्वरूप श्रमिक सेवा की निरन्तरता कायम रखते हुए पुनः सेवा में आने का अधिकारी है किन्तु प्रकरण की विशिष्ट परिस्थितियों व विधिक सिद्धांतों को देखते हुए श्रमिक को त्याग पत्र स्वीकृत करने की तिथि से पुनः सेवा में आने की तिथि तक का बकाया वेतन देय नहीं होगा।

16. अवार्ड आज दिनांक 14-8-95 को लिखाया जाकर सुनाया गया जो केन्द्र सरकार की प्रकाशनार्थ नियमानुसार भेजा जावे।

के. एल. श्याम, न्यायाधीश

नई दिल्ली, 18 जनवरी, 1996

का. आ. 365.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार साउथ सेन्ट्रल रेलवे के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-1-96 को प्राप्त हुआ था।

[संख्या एल–41012/64/93–आई.आर. (बी.आई)]

पी. जे. माईकल, डैस्क अधिकारी

New Delhi, the 18th January, 1996

S.O. 365.—In pursuance of Section II of the Industrial Disputes Act, 1947 (14 of 1947). the Central Government hereby publishes the Award of the Industrial Tribunal, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of South Central Rly. and their workman, which was received by the Central Government on 17-1-1996.

[No. L-41012/64/93-IRBI]

P. J. MICHAEL, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR (MP)

CASE REF. NO. CGIT|LC|(R)(35)|1995.

BETWEEN

Shri Vishwanath Balkhande, Samrat Colony, Basmat Nagar, District Parbhani.

AND

The Divisional Railway Manager, Meter Guage, Secunderabad Division, South Central Railway, Hyderabad.

PRESIDED IN :

By Shri Arvind Kumar Awasthy.

APPEARANCES :

For Workmen : None.

For Management : Shri K. Chandramauli.

INDUSTRY : Railways DISTRICT : Hyderabad.

AWARD

DATED : DECEMBER 28, 1995.

This is a reference made by the Central Government, Ministry of Labour, vide its Notification No. L-41012|64|93-IR(B) dated 9-2-1995, for adjudication of the following industrial dispute:—

SCHEDULE

"Whether the action of the management of D.R.M. Sycunderabad Division, Meter Guage, South Central Railway Hyderabad in terminating the services of Sh. Vishwanath Balkhande Ex-Gangman YKC, Khandwa w.e.f. 1-1-1988 is justified or not? If not to what relief the workman is entitled for ".

2. The case of the workman is that he was working as Gangman under Loco Foreman at Khandwa since 1979 and the management issued the charge-sheet framing the charge of unauthorised absence and the services of the workman were terminated with effect from 1-1-1988 without holding the enquiry and without providing opportunity to the workman to defend his case. The workman has alleged that he became sick and mentally disturbed and on account of his sickness he was unable to attend the duties; that the management has not provided him opportunity to show the reason for his absence. Workman has claimed for reinstatement with full back wages.

3. The case of the management is that the workman had remained absent without pay for more than 467 days in different spells during the period from 1-1-1982 to 31-7-87 as per Annexure 3 and his services were terminated on account of being habitually remaining unauthorisedly absent.

4. The case of the management further is that the workman was punished not the length of his absence but he was removed from the service within the frame work of the Railway Servants (Discipline & Appeal) Rules, 1968. Management has alleged that the Enquiry Officer and the Disciplinary Authority has provided the required opportunity to the workman to defend his case.

5. The workman has not appeared and the management prayed to pass a no dispute award. From the perusal of the order-sheets. It is clear that the workman is not interested in pursuing the case. consequently, no dispute award is passed. No order as to costs.

ARVIND KUMAR AWASTHY, Presiding Officer

नई दिल्ली, 18 जनवरी, 1996

का.आ. 366.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नार्दन रेलवे के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-1-96 को प्राप्त हुआ था।

[संख्या एल-41012/7/91-(आई.आर.बी.आई.)]

पी. जे. माईकल, डैस्क अधिकारी

New Delhi, the 18th January, 1996

S.O. 366.—In pursuance of Section II of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Northern Rly. and their workman, which was received by the Central Government on the 17-1-1996.

[No. L-41012|7|91-IRBI]

P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, PANDU NAGAR, KANPUR

Indutial Dispute No. 152 of 1991

In the matter of dispute between :

Assistant General Secretary,
Uttar Rly. Karamchari Union,
39-II, J. Multistory Colony,
Charbag Lucknow.

AND

Divisional Rly. Manager,
Northern Rly. Hazaratganj,
Lucknow.

AWARD :

1. Central Government, Ministry of Labour, vide its notification No. L-41012|7-91-IR.(DU) dated 25-9-1991 has referred the following dispute for adjudication to this Tribunal:—

Whether the DRM Northern Rly. Lucknow was justified in terminating the services of Sri Raj Kapoor Guard w.e.f. 22-5-86? If not what relief the workman was entitled?

2. The case of the concerned workman Raj Kapoor is that earlier he was appointed as Guard Grade C in the opposite party Northern Rly. on 30-10-82 in the scale of pay Rs. 330—560. He was promoted on 6-12-84 in Guard Gr. B. Further by order dated 22-5-86, the services of the concerned workman were dispensed with. This termination was made without complying with provisions of section 25F Industrial Disputes Act, 1947, the same is bad in law.

3. The opposite party in its written statement does not deny the date of appointment and date of promotion of the applicant. Their only objection is that the applicant was sent thrice for passing P-III course which is a compulsory condition for appointment of Guard. He failed at all the occassion, hence utlimately his services were dispensed with. It does not amount to retrenchment hence there was no need for compliance of section 25F Industrial Disputes Act.

4. In his cross examination the concerned workman Raj Kapoor has admitted that he had gone thrice for training for passing P-III course but each time he had failed. In view of this, in my opinion, it was good ground for removal from service.

5. However, the opposite party has erred in not complying with the provisions of section 25F of Industrial Disputes Act as it amounts to retrenchment. Section 2(oo) of Industrial Dispute Act, defines retrenchment. Four riders have been attached to this definition. The case of the concerned workman does not fall in either of this exception, hence the hard fact would remain that this removal from service is retrenchment. There can be no manner of doubt that the concerned workman is a workman as envisaged by section 2(s) of Industrial Disputes Act. Admittedly no retrenchment compensation and notice pay has been given, as such I come to the conclusion that the termination of service of the applicant in breach of section 25F of Industrial Disputes Act, is not justified. As such he is entitled for reinstatement. However, he will not be entitled for any back wages because of his failure of passing test.

6. Hence may award is that the action of the opposite party in terminating the services of Raj Kapoor w.e.f. 22-5-86 is not justified. Hence the concerned workman is entitled for reinstatement but he will not be entitled for any back wages.

7. Reference is answered accordingly.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 19 जनवरी, 1996

का.आ. 367.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बम्बई पोर्ट ट्रस्ट, बम्बई के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बम्बई के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-1-96 को प्राप्त हुआ था ।

[संख्या एल-31011/25/92-आई.आर. (विविध)]

के. वि. बी. उन्नी, डैस्क अधिकारी

New Delhi, the 19th January, 1996

S.O. 367.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No. 2 Bombay-400001 as shown in the Annexure in the industrial dispute between the employers in relation to the management of Bombay Port Trust, Bombay and their workmen, which was received by the Central Government on 15-1-1996.

[No. L-31011/25/92-IR (Misc)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MOMBAI

PRESENT :

Shri S. B. Panse, Presiding Officer.

Reference No. CGIT-2/71 of 1993

Employers in relation to the management of Bombay Port Trust

AND

Their Workmen.

APPEARANCES :

For the Employer—Mr. C. D. Nargolkar, Advocate.

For the Workmen—Mr. P. G. Uparkar Representative.

Mummbai, the 2nd January, 1996

AWARD

The Government of India, Ministry of Labour by its Order No. L-31011/25/92-IR (Misc.) dated 1-10-93 had referred to the following industrial dispute for adjudication.

"Whether the action of the management of Bombay Port Trust, Bombay in refusing to allow promotion to Shri H. D. Bhalerao, Head Vendor to the post of Coupon Seller while his junior most colleagues viz. S/Shri T. K. Katkar, S. R. Kudkar and R. G. Kulkarni promoted well before in 1981/1983 is just, legal and proper ? If not, to what relief is the workman entitled to ?"

2. The General Secretary of the Bombay Port Trust Mazdoor Sangh filed a statement of claim on 12-7-94. It is contended that Shri Hari Dattu Bhalerao its member was appointed as Vendor in Indira Dock of B.P.T. on 14-1-57. He was promoted to Head Vendor on 1-8-77. Later on whenever there was a leave vacancy he was asked to work as coupon seller in the said canteen.

3. It is pleaded by the union that the worker Bhalerao was never given a memo. His service was unblemished. Even though this was so his juniors Katkar, Kudkar and Kulkarni were promoted as coupon sellers superceeding him. He made representations in the year 1981/1982 and lateron also. But it was of no use.

4. It is submitted by the union that as per the rules the post of coupon seller should have been given as per the seniority. By not giving the post of coupon seller to the worker the management had practiced unfair labour practice. It is averred that under such circumstances the worker is entitled to the back wages and promotion for the post of coupon seller with retrospective effect. It is also prayed that the declaration may be given to the effect that the action of the management in not promoting Bhalerao to the post of coupon seller is not justified.

5. The management resisted the claim by the written statement Ex-'3'. It is averred that the workmen Bhalerao was retired from the service on 1-7-92. He claims the promotion which was allegedly due in 1981 i.e. after about ten years. It is therefore the claim is belated. It is averred that the worker had shown his unwillingness to accept the post of coupon seller in the year 1977. It is therefore he was not considered for the post of coupon seller during the said period. It is averred that another co-employee of the worker by name Anjerlekar, Head Vendor had also shown his unwillingness for promotion of the post of coupon seller as he was also not considered by the management. It is therefore they were not granted the said post, and the others were considered who were juniors in the seniority list.

6. The management pleaded that after about three years the worker gave an application dated 14-8-1981 showing his willingness to accept the post of the coupon seller. Anjerlekar also made the same type of request on 13-7-81. As the workmen had also refused the said post he lost his one time chance and lean on the said post. It is averred that the workman does not have the choice upon him the accept the promotional post whenever he wants and refuse the same at other times. It is submitted that under such circumstances when the vacancy arised on 1-9-81 it was given to Katkar but no decision was taken in respect of the application of the worker. It is submitted that as the introduction of the Central Kitchen and Challan system was in progress the abolition of the post of coupon seller was not considered. It is therefore the appointment of Katkar was made purely on Ad-hoc basis and as stop gap arrangement. It is averred that the application of the worker dated 23-3-82 was also not considered on the same ground and the post was offered to S. R. Kurkar on 1-7-82. It is pleaded that after 1-7-83 till the retirement of the workmen on 1-7-92 there was no vacancy of the post of coupon seller. It is submitted that for all these reasons the reference may be answered in favour of the management.

7. The Union filed its rejoinder at Ex-'5'. It is averred that the first vacancy of the coupon seller occured in 1981. The worker made his representations in 13-8-81, 23-2-82, 25-5-86 and 21-2-91. It is therefore the claim of the management that the worker is putting up his claim after lapse of ten years is without any basis. It is submitted hat the statement of the management that the worker refused the post of coupon seller is totally false. The union reiterated its earlier stand.

8. The issues that fall for my consideration and my findings there on are as follows :

	ISSUES	FINDINGS
1.	Whether the action of the management of the Bombay Port Trust, Bombay in refusing to allow promotion to the worker as coupon seller by promoting the juniors to him is just, legal and proper ?	No
2.	If no, what relief the worker is entitled to ?	As per final order
3.	Whether the claim suffers from latches ?	No

REASONS

9. Both the parties filed purshishes at Ex-'7' and 'B' that they don't want to lead any oral evidence in the matter. They chose to file written arguments at Ex-'9' and '10'. They also relied on the documents which were already filed on the record.

10. It is not in dispute that worker Bhalerao was appointed as the vendor on 14-1-57. It is tried to argue on behalf of the management that the claim of the worker that he was senior to Katkar and Kudkar is incorrect. In view of his representation to the Asstt. Labour Commissioner (Ex-6/8). I am not inclined to accept this submission, because in the said representation Katkar and Kudkar were shown to be appointed with the worker on 14-1-57. That does not necessarily mean that those workers were seniors to Bhalerao. It appears that all these three persons were appointed on the same day and Bhalerao was first among the three. This conclusion has to be drawn on the basis of the W.S. filed by the management. In the written statement the contention is that as Bhalerao showed his unwillingness to accept the post of coupon seller hence the juniors were promoted. I therefore find that the argument which is tried to be advanced is without any merit.

11. Bhalerao was promoted as head vendor on 1-8-77. It is pleaded that he was given the post of Coupon seller in the leave vacancy from time to time. The case of the management appears to be that as the worker showed his unwillingness to accept the post of the coupon seller he was not considered. The management failed to produce any document to that effect. At the time of the argument along with Ex-'10' a letter addressed by Bhalerao to the chief Labour Officer dated 14-8-81 (Annexure-A) is produced. It is stated in this letter that in June 1, 1981 he was given the post of coupon seller but at that time his health was not good. And it was so informed to the management. Now he is physically fit as stated by the doctor and he should be given the promotional post of coupon seller. From this letter at the most it can be said that earlier the worker informed all the management regarding his ill health. By no stretch of imagination it can be said that he refused the post of coupon seller. As this is so the plea which is tried to be taken by the management that the workmen was unwilling to accept the post of the coupon seller is not just and proper.

12. Even for the sake of argument it is accept that the worker showed his unwillingness as alleged by the management in the year 1977, but thereafter admittedly there was representations by the worker dated 14-8-81, 23-2-82 (Ex. 6/2), 21-2-91 (Ex-6/3), 22-6-89 (Ex-6/5) and letter dated 28-9-91 (Ex-6/6). These representations were not considered by the management at a relevant time. There were no reasons given why the representations were not considered. Even if it is accepted that no vacancy accrued after 1-7-83 till the retirement of Bhalerao as two representations were on the record there were vacancies. There is no record to show that when the person refused such a post he is thereafter debarred from claiming it again. No rules is brought to my notice which can be said to be form the service conditions to show that when the unwillingness is given for this particular post then the requests made by such a worker should not be considered for a particular period. Under such circumstances the action of the management appears to be unjust, illegal and improper, for not considering the requests

made by the worker. It is tried to argue that the worker retired from service on 1-7-92. As such no promotions can be given to him. No doubt now he will not be in position to have the powers or enjoyment to work as a coupon seller. But there is nothing wrong in declaring in that particular period he was promoted as a coupon seller and was entitled to monetary reliefs of that post. It is pertinent to note that the worker in his application (Ex-6/3) dated 21-2-91 had stated that he had nothing to say in respect of the promotions of one Mr. Katkar as it was given to him he being from the reserved category. But so far as the promotion of Mr. Kutkar and Kulkarni is concerned he had the grievances. I find such substance in his submissions. He is not in position to give the dates when Kutkar and Kulkarni were promoted but that record is with the management.

13. I have already discussed above that the worker and the union made representations since 1981 till 1991 periodically. That clearly go to show that they were waiting for favourable results. It cannot be said that they were sitting idle and had come before the Tribunal abruptly. In other words the submissions made by the management that the references suffers from latches has no merit.

14. It is tried to argue on behalf of the management that promotion is not right. Good record by itself does not entitle him for promotion when it is on merit cum performance. It is also argued that when the promotion is not on seniority alone it does not require interference by court. It is submitted that promotion is the managerial function, and expectations are malafide and victimisation. In the absence of such findings the court has no jurisdiction to interfere in the same. Here in this case from the statement of claim and the written statement it appears that the post of coupon seller was given as per the seniority list. There is nothing to show on the record that this promotion was given on the basis of seniority and selection. Under such circumstances there appears to be victimisation to the worker by not giving him promotion. The management alongwith written argument had given a list of many authorities to substantiate the argument that promotion is managements discretion. But for reasons stated above I do not find any merit in the said argument. In the result I record my findings on the issues accordingly and pass the following Order :

ORDER

1. The action of the management of Bombay Port Trust, Bombay in refusing to allow promotion of Shri H.D. Bhalerao, Head Vendor to the post of Coupon seller while his junior most colleagues viz. S/Shri T. K. Katkar, S. R. Kudkar and R. G. Kulkarni promoted well before in 1981/83 is not just, legal and proper.
2. The management is directed to treat Bhalerao as promoted as coupon seller when his junior Kutkar was promoted to that post.
3. The management is directed to pay the worker all monetary benefits to coupon seller from the above said date (i.e. from the promotional date of Mr. Kutkar) till the date of retirement of worker.
4. No order as to costs.

S. B. PANSE, Presiding Officer

नई दिल्ली, 19 जनवरी, 1996

का.आ. 368.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-1-96 को प्राप्त हुआ था।

[संख्या एल-12012/89/91-आई.आर.बी.आई.]

पी. जे. माईकल, डैस्क अधिकारी

New Delhi, the 19th January, 1996

S.O. 368.—In pursuance of Section II of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of SBI and their workmen, which was received by the Central Government on 18-1-96.

[No. L-12012/89/91-IR B-I]

P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI

I. D. No. 78/91

Shri Sarnam Singh S/o Shri Suraj Pal Singh
r/o Village Chandoli Buzarg,
P.O. Sadhu Ashram, Distt. Aligarh.

Versus

Management,
State Bank of India,
New Delhi.

APPEARANCES :

None—for the workman.

Shri D. A. V. Shastry—for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-12012/89/91-IR (B3) dated 18-6-91 has referred the following industrial dispute to this Tribunal for adjudication :

"Whether the Dy. General Manager, State Bank of India, Agra, was justified in terminating the services of Shri Sarnam Singh son of Suraipal Singh as Guard at Aligarh Branch w.e.f. 4-7-89 in violation of Section 25-F of I. D. Act, 1947 ? If not, to what relief the workman is entitled to ?"

2. During the pendency of the dispute the workman appeared on 20-1-92 and made statement and requested for adjournment for filing rejoinder. He did not appear thereafter and on 5-2-92 he was ordered to be proceeded against exparte. He did not appear even on any subsequent date. However, the management filed affidavit of one N. K. Gupta who was working as Manager of State Bank of India Aligarh Branch Ex. MW-1/1. In view of this situation there is no reason to disbelieve the statement of Shri N. K. Gupta accompanied by a duly sworn affidavit regarding the action of the management and in the absence of any evidence produced by the workman I hold that the management was justified in terminating the services of he workman and the workman was not entitled to any relief under these circumstances. Parties are, however, left to bear their own costs of this dispute.

Dated : 26th December, 1995.

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 19 जनवरी, 1996

का.आ. 369.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब एण्ड सिंध बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में, केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-1-96 को प्राप्त हुआ था।

[संख्या एल-12012/171/91 आई.आर.बी. 2]

अज मोहन, डैस्क अधिकारी

New Delhi, the 19th January, 1996

S.O. 369.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Punjab & Sind Bank and their workmen, which was received by the Central Government on 16-1-96.

[No. L-12012/171/91-IR(B-II)]

BRAJ MOHAN, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR (MP)

Case Ref. No. CGIT/LC(R)(154)/1991

BETWEEN

Shri Arvind Kumar Jain represented through the General Secretary, Bank Employees Association C/o. State Bank of Indore, A. B. Road, Guna (MP).

AND

The Regional Manager, Punjab & Sind Bank, E-3-114, Arera Colony, Bhopal (MP).

PRESIDED IN : By Shri Arvind Kumar Awasthy.

APPEARANCES :

For workman.—Shri P. N. Sharma.

For Management.—Shri Babban.

INDUSTRY : Banking DISTRICT : Bhopal (MP).

AWARD

Dated, December, 28th 1995

This is a reference made by the Central Government, Ministry of Labour, vide its Notification No. L-12012/171/91 IR B-II dated 19-9-1991, for adjudication of the following industrial dispute:—

SCHEDULE

"Whether the action of the management of Punjab & Sind Bank in terminating the services of Sh. Arvind Kumar Jain is justified ? If not, to what relief is the workman entitled ?"

2. The case of the workman is that the workman was a full time Peon and he used to work from 9 a.m. to 6 p.m. on daily wages of Rs. 15 per day and that the management has illegally terminated the services of the workman.

3. The workman along with the Union representative, Shri P. N. Sharma and the management by Shri Babban appeared on 20-12-1995. Management agreed to provide appointment to the workman provided the workman withdraw the reference pending before this Tribunal. The proposal of the management was voluntarily accepted by the workman and the workman agreed to withdraw the case on the proposed condition of the management that the fresh appointment will be provided to him. Consequently, there is no dispute between the parties. Hence no dispute award is hereby passed. No order as to cost's.

ARVIND KUMAR AWASTHY, Presiding Officer

नई दिल्ली, 19 जनवरी, 1996

का. आ. 370.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब एण्ड सिंध बैंक के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में, केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-1-96 को प्राप्त हुआ था।

[संख्या एल-12012/296/91-आई. आर. (बी. 2)]

ब्रज मोहन, डैस्क अधिकारी

New Delhi, the 19th January, 1996

S.O. 370.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Punjab & Sind Bank and their workmen, which was received by the Central Government on 16-1-96.

[No. L-12012/296/91-IR (B-II)]

BRAJ MOHAN, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR (MP)

Case Ref. No. CGIT/LC(R)(64)/1992

BETWEEN

Shri Pramod Kumar Singh represented through the General Secretary, Punjab and Sindh Bank Employees Union C/o. Punjab & Sindh Bank, 7, Hamidia Road, Bhopal (MP).

AND

The Regional Manager, Punjab and Sindh Bank E-3/114, Arera Colony, Bhopal (MP).

PRESIDED IN : By Shri Arvind Kumar Awasthy.

APPEARANCES :

For Workman.—Shri P. N. Sharma.

For Management.—Shri Babban.

INDUSTRY : Banking DISTRICT : Bhopal (MP).

AWARD

Dated, December. 28th 1995

This is a reference made by the Central Government, Ministry of Labour, vide its Notification No. L-12012/296/91-IR(B-2) dated 27-3-1992, for adjudication of the following industrial dispute :—

SCHEDULE

"Whether the action of the management of Punjab & Sindh Bank in terminating the service of Shri Pramod Kumar Singh is justified ? If not, to what relief is the workman entitled to ?"

2. Parties have not filed the statement of claim and written statement. Management has filed the letter dated 7-10-1995 to the effect that the management and the Union reached on agreement to provide employment to the temporary peons who have worked for more than 240 days. The employee agreed for fresh appointment without claming back wages and seniority.

3. The workman appeared with his Union representative, Shri P. N. Sharma on 20-12-1995 and on that date the management offered to provide appointment to the workman provided the workman withdraws the reference. The proposal of the management was accepted by the workman and the workman voluntarily agreed to withdraw the reference. Consequently, no dispute award is hereby passed. No order as to cost.

ARVIND KUMAR AWASTHY, Presiding Officer

नई दिल्ली, 19 जनवरी, 1996

का.आ. 371—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नैशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में, केन्द्रीय सरकार औद्योगिक अधिकरण, जयपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-1-96 को प्राप्त हुआ था।

[संख्या एल. 12012/436/88/डी II ए/आई. आर. बी. 2]

ब्रज मोहन, डैस्क अधिकारी

New Delhi, the 19th January, 1996

S.O. 371.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jaipur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workmen, which was received by the Central Government on 18-1-96.

[No. L-12012/436/88-D.II.A/IR(B-II)]
BRAJ MOHAN, Desk Officer

अनुबन्ध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस सं. सी.आई.टी. 5/1989

रैफरैंस : केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश क्रमांक 3-1-89 क्रमांक एल-12012/436/88-डी 2 (ए)

श्री कुलभूषण बैरागी मार्फत पंजाब नेशनल बैंक एम्पलाईज यूनियन, परवाना भवन, माधोबाग, जोधपुर।

—प्रार्थी

बनाम

क्षेत्रीय प्रबन्धक, पंजाब नेशनल बैंक, श्री गंगानगर।

—अप्रार्थी

उपस्थित

माननीय न्यायाधीश श्री के. एल. श्याम, आर.एच.जे.एस.

प्रार्थी की ओर से : श्री जे. एल. शाह

अप्रार्थी की ओर से : श्री दिलीपन सिंह

दिनांक अवार्ड : 29-7-1995

अवार्ड

निम्न विवाद केन्द्रीय सरकार द्वारा अधिनिर्णय हेतु निर्देशित किया गया है :

"Whether the action of the management of Punjab National Bank in stopping one increment of Shri Kulbhushan Bairathi vide order dated 16-5-87 is justified ? If not, to what relief is the workman entitled ?"

2. श्रमिक ने अपने क्लेम में यह अभिकथित किया है कि उसके खिलाफ की गई धारेल जांच नियमानुसार व नैसर्गिक न्याय के सिद्धांतों के अनुरूप नहीं की गई थी व उपलब्ध साक्ष्य में आरोप सिद्ध नहीं होता है इसलिए श्रमिक के खिलाफ पारित दण्डादेश अनुचित एवं अवैध है। नियोजक ने अपने जवाब में विभागीय जांच को उचित बताते हुए कहा है कि श्रमिक को अभिकथित तथ्यों का खण्डन किया है व यह भी कहा है कि श्रमिक को पूरी जांच कार्यवाही में अपना पक्ष प्रस्तुत करने का समुचित अवसर दिया गया था व उपलब्ध साक्ष्य के आधार पर जांच अधिकारी ने श्रमिक को दोषी मानने का जो विनिश्चय दिया है वह सही है व इसके परिणामस्वरूप सक्षम अधिकारी द्वारा पारित दण्डादेश उचित व वैध है।

3. विभागीय जांच की औचित्यता व निष्पक्षता के संबंध में बहस पूर्व में सुनी गई थी व 28-4-94 के आदेश से यह अभिनिर्धारित किया गया था कि श्रमिक के खिलाफ की गई विभागीय जांच उचित व नियमानुसार नहीं है। दिनांक 28-4-94 की आदेशिका में यह आदेश दिया गया कि आईन्दा विपक्षी को साक्ष्य हेतु तारीख निश्चित की जाती है। यह साक्ष्य श्रमिक के खिलाफ लगाये गये आरोप के संबंध में प्रस्तुत करने का निर्देश दिया गया। 11-7-94 को नियोजक का यह प्रार्थना पत्र खारिज किया गया जिसके जरिये 28-4-94 को पारित आदेश को पुनरावलोकित करने का अनुरोध किया गया था व इस प्रकार जहां तक इस न्यायाधिकरण का प्रश्न है, दिनांक 28-4-94 का आदेश अंतिम रूप ले चुका है व यदि नियोजक पक्ष उस आदेश से असंतुष्ट हों तो वे माननीय उच्च न्यायालय के समक्ष रिट याचिका के जरिये अपील प्रस्तुत करने के लिए स्वतंत्र है।

4. 12-9-94 को श्रमिक की ओर से एक प्रार्थना पत्र प्रस्तुत कर यह अभिकथित किया गया कि न्यायाधिकरण द्वारा श्रमिक के खिलाफ जांच को अनुचित व अवैध मानने के पश्चात् मान्य विधि सिद्धांतों के अनुसार न्यायाधिकरण के समक्ष श्रमिक के खिलाफ दुराचरण का आरोप साबित करने के लिए नियोजक पक्ष को साक्ष्य प्रस्तुत करने का अवसर दिया जा सकता है। इस प्रार्थना पत्र पर आज बहस सुनी गई। श्रमिक यूनियन के प्रतिनिधि ने बहस में माननीय राजस्थान उच्च न्यायालय द्वारा डी.बी. सिविल अपील सं. 197/93 से 205/93 में दिये गये निर्णय दिनांक 6-4-94 की फोटो प्रति प्रस्तुत की है जिसमें माननीय सर्वोच्च न्यायालय के विभिन्न निर्णयों को संदर्भित व विवेचित करते हुए यह सिद्धांत प्रतिपादित किया गया है कि जहां न्यायाधिकरण द्वारा सेवा मुक्ति के मामले के अलावा अन्य दण्डादेश के मामले में यह अभिनिर्धारित किया जाता है कि विभागीय जांच उचित प्रकार से नहीं की गई है वहां नियोजक पक्ष को न्यायाधिकरण के समक्ष आरोप प्रमाणित करने के लिए अवसर दिया नहीं जा सकता है तथा यदि विभागीय जांच को उचित माना जाता है तो आक्षेपित दण्डादेश में कोई भी कमी करने की या उसे अपास्त करने का क्षेत्राधिकार न्यायाधिकरण को उपलब्ध नहीं है। सारांश में यह सिद्धांत प्रतिपादित किया गया है कि धारा 11-ए के तहत दण्डादेश में संशोधन करने की व कमी करने का जो क्षेत्राधिकार न्यायाधिकरण को है वह सेवा मुक्ति के मामले के अलावा अन्य मामलों में लागू नहीं होता है। इस विधि दृष्टान्त के विपरीत कोई भी अन्य निर्णय नियोजक पक्ष की ओर से प्रस्तुत नहीं किया गया है जिससे यह प्रकट हो कि इस प्रकार के मामलों में विभागीय जांच को अनुचित घोषित करने के बाद भी नियोजक को दुराचरण का आरोप साबित करने के लिए साक्ष्य प्रस्तुत करने हेतु अवसर दिया जा सकता है। अतः श्रमिक की ओर से 12-9-94 को जो प्रार्थना पत्र प्रस्तुत किया गया है वह स्वीकार किये जाने योग्य है। नियोजक के विद्वान प्रतिनिधि का कथन है कि उन्हें साक्ष्य प्रस्तुत करने का जो अवसर दिया गया है वह न्यायिक आदेश है इसलिए न्यायाधिकरण उसको वापस लेने के लिए या उसका पुनरावलोकन करने के लिए सक्षम नहीं है। माननीय राजस्थान उच्च न्यायालय के जिस विधि दृष्टान्त को पूर्व में संदर्भित किया गया है उसे देखते हुए यह मानने का आधार है कि विधिक प्रावधानों के विपरीत नियोजक पक्ष को साक्ष्य प्रस्तुत करने का अवसर दिया गया है इसलिए यदि यह माना जाये कि पूर्व आदेश न्यायिक आदेश की परिभाषा में आता है तो भी उसे पुनरावलोकित करने का क्षेत्राधिकार न्यायाधिकरण को है। एक यह भी उल्लेख किया जाना आवश्यक है कि 28-4-94 का आदेश तथ्यों के गुण दोष पर विचार करने के पश्चात् पारित नहीं किया हुआ है व मात्र प्रक्रिया का आदेश है जिसे भूल प्रकट होने पर कभी भी संशोधित किया जा सकता है। निष्कर्ष यह है कि दिनांक 12-9-94 को श्रमिक की ओर से जो प्रार्थना

पत्र प्रस्तुत किया गया है उसे स्वीकार किया जाता है व नियोजक पक्ष को साक्ष्य प्रस्तुत करने का अवसर देने का कोई भी वैधानिक औचित्य नहीं है। माननीय राजस्थान उच्च न्यायालय के लिए डी.ओ. निर्णय का पूर्व में उल्लेख किया गया है उसमें प्रतिपादित सिद्धान्तों को देखते हुए श्रमिक के खिलाफ पारित आक्षेपित दण्डादेश को कायम रखने का कोई भी वैधानिक आधार नहीं है इसलिए अधिनिर्णय श्रमिक के पक्ष में किया जाना आवश्यक है।

5. निर्देशित विवाद का अधिनिर्णय इस प्रकार किया जाता है कि श्रमिक कुल भूषण बैनाडी के खिलाफ पंजाब नेशनल बैंक के प्रबंधपत्र द्वारा 16-5-87 के आदेश से एक वार्षिक वेतन वृद्धि रोकने का जो दण्डादेश पारित किया गया है यह अनुचित व अवैधानिक होने से अपास्त किया जाता है व श्रमिक इसके परिणामस्वरूप सभी सुसंगत लाभ प्राप्त करने का अधिकारी होगा। अवार्ड आज दिनांक 29-7-95 को लिखाया जाकर सुनाया गया जो केन्द्र सरकार को प्रकाशनार्थ भेजा जावे।

के. एल. व्यास, न्यायाधीश

नई दिल्ली, 19 जनवरी, 1996

का.आ. 372.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इंडिया के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में, केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-1-96 को प्राप्त हुआ था।

[संख्या एल-12012/177/93/आई.आर.बी. 2]

ब्रज मोहन, डैस्क अधिकारी

New Delhi, the 19th January, 1996

S.O. 372.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workmen, which was received by the Central Government on 18-1-96.

[No. L-12012/177/93-IR (B-II)]

BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARAMA, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL, NEW DELHI

I.D. No. 86/93

In the matter of dispute between :
Up Mahaprabandhak,
Shri M. K. Gupta,
Asstt. Cashier Cum Clerk,
through UP Mahasachiv,
Central Bank of India, Staff Union,
Central Bank Building,
Chandni Chowk, Delhi-6.

Versus

Up Mahaprabandhak,
Central Bank of India, Link House,
4, Bahadur Shah Zafar Marg.,
New Delhi.

APPEARANCES :

Shri T. C. Gupta—for the workman.

Shri D. K. Mehta with Shri D. D. Kapoor—for the Management.

187 GI/96—16

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-12012/177/93-I.R. (B-2) dated 24-11-93 has referred the following industrial dispute to this Tribunal for adjudication :—

"Whether the action of the Regional Manager, Central Bank of India in dismissing Sri M. K. Gupta Asstt. Cashier Cum--Clerk w.e.f. 3-2-89 is justified ? If not what relief the concerned workman is entitled to ?"

2. On 27-11-95 the representative for the workman made statement that since the workman had expired and his widow did not want to pursue the case. No dispute Award may be given in this case.

3. In view of the statement of the workman representative no dispute exist due to the death of the workman and no dispute award is given in this case leaving the parties to bear their own costs.

27th November, 1995.

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 19 जनवरी, 1996

का.आ. 373.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूको बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में, औद्योगिक अधिकरण, कोटा के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-1-96 को प्राप्त हुआ था।

[संख्या एल-12012/329/91-आई.आर.बी. 2]

ब्रज मोहन, डैस्क अधिकारी

New Delhi, the 19th January, 1996

S.O. 373.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Kota as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of UCO Bank and their workmen, which was received by the Central Government on 18-1-96.

[No. L-12012/329/91-IR (B-II)]

BRAJ MOHAN, Desk Officer

अनुबन्ध

न्यायाधीश, औद्योगिक न्यायाधिकरण (केन्द्रीय) कोटा/राज.

निर्देश प्रकरण क्रमांक: औ. न्या. (केन्द्रीय)-4/92

दिनांक स्थापित : 24-4-92

प्रसंग : भारत सरकार, श्रम मंत्रालय के आदेश संख्या एल. 12012/399/91-आई.आर. (बी-II) दिनांक 20-4-92

औद्योगिक विवाद अधिनियम, 1947

मध्य

बनवारी लाल राजावत आत्मज हरमुखलाल राजावत
जाति धोबा निवासी ए.सी. 120 बारां सं. 17,
मोहल्ला जिन्सी, कोटा राज.

—प्रार्थी श्रमिक

एवं

खण्डीय प्रबन्धक, यूको बैंक, खण्डीय कार्यालय 28-ए बनी पार्क, जयपुर।

—प्रतिपक्षी नियोजक

उपस्थित

श्री आर. के. चावान,

आर. एच.जे.एस

प्रार्थी श्रमिक की ओर से प्रतिनिधि :— श्री डी. आर. द्विवेदी,

प्रतिपक्षी नियोजक की ओर से प्रतिनिधि :— श्री नन्द लाल शर्मा

अधिनिर्णय दिनांक : 21.12.95 श्री ओराम बेहना

अधिनिर्णय

भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा निम्न निर्देश औद्योगिक विवाद अधिनियम, 1947 की धारा 10(1)(घ) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है :—

"Whether the action of the management of UCO Bank in terminating the services of Sh. Banwari Lal Rajawat, part-time sweeper, & Peon is justified ? If not, to what relief is the workman entitled ?"

2. निर्देश न्यायाधिकरण में प्राप्त होने पर दर्ज रजिस्टर किया गया व पक्षकारों को सूचना जारी की गयी तदुपरान्त दोनों पक्षों की ओर से अपने-अपने अभ्यावेदन प्रस्तुत किये गये ।

3. आज पत्रावली साक्ष्य प्रार्थी हेतु नियत थी, परन्तु प्रार्थी की ओर से प्रतिनिधि श्री नन्द लाल शर्मा ने प्रार्थना-पत्र प्रस्तुत कर निवेदन किया कि प्रार्थी की तबियत खराब हो गयी है इसलिए एक अवसर दिया जाये । इस पर प्रतिपक्षी ने अपनी आपत्ति प्रकट की । पक्षकारों को सुना गया । प्रार्थी को यह अन्तिम अवसर साक्ष्य हेतु दिया गया था परन्तु कोई साक्ष्य उपलब्ध नहीं करायी गयी और प्रार्थना-पत्र जो आज प्रस्तुत किया गया है उसके साथ शपथ-पत्र प्रस्तुत नहीं किया गया है जिससे प्रार्थना-पत्र पर गौर किया जा सके, अतः प्रार्थना-पत्र प्रार्थी इस वास्ते खारिज किया जाता है और प्रार्थी की साक्ष्य बन्द की जाती है । प्रतिपक्षी की ओर से भी कोई साक्ष्य प्रस्तुत नहीं कर अपनी साक्ष्य समाप्त की गयी । बहस सुनी गयी व पत्रावली का अवलोकन किया गया जिससे प्रकट होता है कि चूंकि प्रार्थी की ओर से अपने क्लेम अभ्यावेदन में कोई साक्ष्य प्रस्तुत नहीं की गयी है जिससे कि उसकी सत्यता की पुष्टि हो सके, अतः साक्ष्य के अभाव में प्रार्थी कोई राहत प्राप्त करने का अधिकारी नहीं पाया जाता और भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा सम्प्रेषित निर्देश को इसी प्रकार से उत्तरित किया जाता है ।

इस अधिनिर्णय को समुचित सरकार को नियमानुसार प्रकाशनार्थ भिजवाया जावे ।

आर. के. चावान, न्यायाधीश,

नई दिल्ली, 19 जनवरी, 1996

का.आ. 374.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एल.आई.सी. ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में, केन्द्रीय सरकार औद्योगिक अधिकरण, जयपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-1-96 को प्राप्त हुआ था ।

[संख्या एल-17012/6/88-डी II ए/आई.आर. (बी. 2)]

ब्रज मोहन, डैस्क अधिकारी

New Delhi, the 19th January, 1996

S.O. 374.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jaipur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of L.I.C. of India and their workmen, which was received by the Central Government on 18-1-96.

[No. L-17012/6/88-D.II.A/IR. (B-II)]

BRAJ MOHAN, Desk Officer

अनुबंध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं. सी आई.टी. 58/1989

रैफरेंस : केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली की अधिसूचना क्रमांक एल-17012/6/88-डी (बी) दि. 18-5-89

श्री देवीलाल पुत्र श्री मंगर लाल द्वारा भारतीय जीवन बीमा निगम शाखा कार्यालय क्रम. 2 गुमानपुरा कोटा (राज.)

--प्रार्थी

बनाम

वरिष्ठ मंडल प्रबन्धक, भारतीय जीवन बीमा निगम जीवन प्रकाश रानाडे मार्ग अजमेर ।

--अप्रार्थी

उपस्थित

माननीय न्यायाधीश श्री के. एल. चावान : आर. एच. जे. एस.

प्रार्थी की ओर से : श्री सुरेश कश्यप

अप्रार्थी की ओर से : श्री एम. डी. अग्रवाल

दिनांक अवार्ड : 17-4-1995

अवार्ड

केन्द्र सरकार द्वारा निम्न निर्देश अधिनिर्णय हेतु निर्दिष्ट किया गया है :

"Whether the action of the management of Sr. Divisional Manager, Life Insurance Corporation of India, Ajmer in terminating the services of Shri Devilal w.e.f. 6-10-84 is justified ? If not, what relief the workman concerned is entitled to ?"

2. श्रमिक के क्लेम के कथन का सार यह है कि उसने विपक्षी निगम की झालावाड़ शाखा में दिनांक 15-6-84 से 5-10-84 तक स्थायी रिक्ति के विपरीत चतुर्थ श्रेणी कर्मचारी के पद पर अस्थाई रूप से कार्य किया था, व 5-10-84 के पश्चात् बिना नोटिस व मुआवजा दिये उसको सेवा समाप्त कर दी गई व श्रमिक को सेवा मुक्ति के पश्चात् अब्दुल हलीम नाम के एक अन्य व्यक्ति को चतुर्थ श्रेणी कर्मचारी के पद पर अस्थाई रूप से नियुक्त किया गया व इस प्रकार नियोजक द्वारा धारा 25-एन औद्योगिक विवाद अधिनियम 1947 (जिसे बाद में अधिनियम संबोधित किया जायेगा) के प्रावधान की अवहेलना की गई । अन्तोगत्वा यह मांग की गई है कि दिनांक 26-6-84 से लगातार श्रमिक को सेवा में मानते

हुए बकाया वेतन व अन्य लाभ दिलाये जावें। क्लेम में यह भी वर्णित किया गया है कि विपक्षी द्वारा 2-5-89 को श्रमिक को नियम के तहत स्थाई रूप से चतुर्थ श्रेणी कर्मचारी के पद पर नियुक्ति दी जा चुकी है।

3. निगम की ओर से प्रस्तुत क्लेम के जवाब में प्रारंभिक आपत्तियों में यह अभिकथित किया गया है कि श्रमिक द्वारा नियोजक से समक्ष विवाद के संबंध में कोई भी मांग नहीं उठाई गई, जो कि माननीय सर्वोच्च विरोधाभास है, राष्ट्रीय न्यायाधिकरण के निर्णय दिनांक 11-6-86 के अनुसार नियुक्ति के लिए श्रमिक ने निर्धारित अवधि में कोई प्रार्थना पत्र प्रस्तुत नहीं किया तथा निगम द्वारा बनाये गये स्टाफ रैगुलेशन के नियम 8 (2) के अनुसार अधिक कार्य के लिए निस्तारण के लिए अस्थाई रूप से निगम को नियुक्ति देने का अधिकार है व इस प्रकार की नियुक्ति के संबंध में स्थाई नियुक्ति के लिए कोई क्लेम औद्योगिक विवाद का नहीं बनता इसलिए क्लेम खारिज किये जाने योग्य है। गुण दोष पर यह जवाब दिया गया है कि श्रमिक को झालावाड़ शाखा में अस्थाई रूप से बढ़े हुए काम के निस्तारण के लिए 13-7-84 से 5-10-84 की अवधि के लिए नियुक्ति दी गई थी व 85 दिन की इस अवधि के समाप्त होने के पश्चात् नियुक्ति की शर्तों के अनुसार श्रमिक की सेवा स्वतः समाप्त हो गई थी व इस कारण नियोजक की यह कार्यवाही आयोग की छंटनी की परिभाषा में नहीं आती। बकाया क्लेम नाम के कर्मचारी को बाद की अवधि में अस्थाई रूप से 85 दिन के लिए नियुक्त करने के तथ्य को जवाब में अस्वीकार नहीं किया गया है।

4. मौखिक साक्ष्य में श्रमिक की ओर से उसका स्वयं का व निगम की ओर से एक गवाह श्री टी.सी. बोहरा का शपथ पत्र प्रस्तुत किया गया है। किसी भी पक्ष द्वारा कोई प्रलेख अपने कथन के समर्थन में प्रस्तुत नहीं किया गया है। बहस सुनी गई। जवाब में नियोजक द्वारा जो विधिक व प्रारंभिक आपत्तियां ली गई थी जिसमें से स्टाफ रैगुलेशन की धारा 8(2) के प्रावधान के अलावा बहस के समय किसी भी विधिक तर्क को प्रेरित नहीं किया गया है इसलिए उन पर विचार करने की आवश्यकता नहीं व इस विधिक बिन्दुओं को नियोजक के विपरीत निर्णित किया जाता है।

5. सर्वप्रथम दोनों पक्षों के अभिकथनों को देखते हुए यह विनिश्चय किया जाता है कि श्रमिक को नियुक्ति किसी अवधि के लिए व किस रूप में की गई थी तथा उस अवधि के पश्चात् श्रमिक की सेवा मुक्ति का मामला छंटनी की परिभाषा में आता है या नहीं।

6. श्रमिक ने अपने शपथ पत्र में यह बताया है कि उसे स्थाई पद के विपरीत चतुर्थ श्रेणी कर्मचारी के पद पर 26-6-84 से 5-10-84 तक नियुक्त किया गया था व 6-10-84 से सेवा से निकाल दिया गया है। निगम के जवाब व उनके गवाह श्री टी.सी. बोहरा की साक्ष्य में इस बात पर कोई विवाद नहीं है कि श्रमिक की सेवा 5-10-84 को समाप्त हुई थी इसलिए उस संबंध में इस पर अन्य कोई विचार करना अपेक्षित नहीं है। नियुक्ति के संबंध में कोई भी लिखित आदेश श्रमिक ने प्रस्तुत नहीं किया है जबकि जिरह में उसने यह स्वीकार किया कि लिखित नियुक्ति पत्र निगम द्वारा उसे दिया गया था। उसने यह स्वीकार किया है कि जो नियुक्ति उसे दिया गया था वह जुलाई 1984 से अक्टूबर 1984 की अवधि का था किन्तु वास्तव में श्रमिक ने जून 1984 से झालावाड़ शाखा में कार्य किया था व 13 जुलाई से पूर्व वह कार्य उसने संबंधित शाखा प्रबन्धक के मौखिक आदेश से किया था। श्रमिक ने यह भी बताया है कि उस अवधि का वेतन उसे दिया गया था, उपस्थिति रजिस्टर में उसकी उपस्थिति दर्ज की गई थी व वेतन के वाउचर भी बनाये गये थे। इस तथ्य को साबित करने के लिए श्रमिक ने निगम कार्यालय से रिकार्ड तलब करने का कोई भी प्रार्थना पत्र नहीं दिया है व इसके अलावा अपने स्वयं के पास नियुक्ति पत्र होना मानते हुए भी नियुक्ति पत्र को प्रस्तुत नहीं किया है। इस परिस्थिति से श्रमिक के कथन के विपरीत धारणा न्यायाधिकरण द्वारा वैधानिक रूप से किया जाना न्यायोचित है क्योंकि निगम ने अपने जवाब में इस तथ्य का स्पष्ट रूप से खण्डन किया है कि श्रमिक को जून 1984 से नियुक्ति दी गई थी। निगम के गवाह श्री बोहरा ने शपथ पत्र में यह वर्णित किया है कि श्रमिक की नियुक्ति मात्र 13-7-84 से 5-10-84 की अवधि के लिए की गई थी। इस तथ्य पर श्री बोहरा से कोई भी जिरह नहीं हुई है इसलिए दोनों पक्षों को मौखिक साक्ष्य व श्रमिक द्वारा संबंधित प्रलेख प्रस्तुत नहीं करने व उन्हें निगम से प्रस्तुत नहीं करवाने के आवेदन के अभाव में यह माना जाता है कि श्रमिक की नियुक्ति अस्थाई रूप से झालावाड़ शाखा में 13-7-84 से 5-10-84 की अवधि के लिए ही दी गई थी। श्रमिक ने अपने क्लेम व शपथ पत्र में यह वर्णित किया है कि उसे स्थाई रिक्ति के विपरीत नियुक्ति दी गई थी जबकि निगम का कथन है कि स्टाफ रैगुलेशन की धारा 8(2) के तहत निगम को अतिरिक्त कार्य के निस्तारण के लिए अस्थाई नियुक्ति देने का अधिकार है व इसी अधिकार के तहत श्रमिक को, 13-7-84 से 5-10-84 की अवधि के लिए नियुक्ति दी गई थी। गवाह श्री बोहरा ने इस संबंध में जो कथन किया है उस पर कोई भी जिरह श्रमिक द्वारा नहीं की गई है व श्रमिक ने अपने कथन के समर्थन में कोई भी प्रलेख न तो प्रस्तुत किया है व न ही निगम से तलब करवाया है। ऐसी स्थिति में श्रमिक का यह कथन भी मानने योग्य नहीं है कि उसे जो नियुक्ति दी गई थी वह किसी स्थाई रिक्त पद के विपरीत दी गई थी।

7. दोनों पक्षों के अभिकथनों व साक्ष्य के आधार पर यह प्रमाणित माना गया है कि श्रमिक की नियुक्ति अस्थाई कार्य के निस्तारण के लिए 85 दिन की एक निश्चित अवधि के लिए दी गई थी इसलिए इस अवधि के पश्चात् श्रमिक को सेवा में नहीं लेने की कार्यवाही छंटनी की परिभाषा में नहीं आती है जैसा कि अधिनियम की धारा 2(00) (बी बी) में परिभाषित किया गया है। यह सही है कि नियुक्ति पत्र किसी भी पक्ष ने प्रस्तुत नहीं किया है किन्तु उसके अभाव में जो साक्ष्य उपलब्ध है उसी को दृष्टिगत रखते हुए विनिश्चय किया जाना न्यायाधिकरण के लिए आवश्यक है। चूंकि श्रमिक की सेवा समाप्त करने की कार्यवाही नियोजक की छंटनी की परिभाषा में नहीं आती है इसलिए सेवा मुक्ति से पूर्व श्रमिक को कोई भी नोटिस या मुआवजा दिया जाना किसी भी रूप से आवश्यक नहीं था।

8. श्रमिक के विद्वान प्रतिनिधि ने माननीय राजस्थान उच्च न्यायालय का एक निर्णय ओरियेन्टल बैंक ऑफ कामर्स बनाम पीठासीन अधिकारी केन्द्रीय सरकार औद्योगिक न्यायाधिकरण आर.एल.आर. 199 (2) पेज 158 संदर्भित किया गया है। इसमें यह प्रतिपादित किया गया है कि किसी भी श्रमिक द्वारा 240 दिन की वैधानिक अवधि पूरी नहीं करने की स्थिति में भी यदि उसे सेवा मुक्त करने की कार्यवाही छंटनी की परिभाषा में आती है तो नियोजक के लिए धारा 25—जी व 25—एच अधिनियम के प्रावधान की पालना करना आवश्यक है क्योंकि यह दोनों प्रावधान धारा 25—एफ के प्रावधान के स्वतंत्र रूप से प्रभाव से प्रभावी माने जाने योग्य है। इस विधि सिद्धान्त के विरुद्ध कोई भी निर्णय नियोजक की ओर से प्रस्तुत नहीं किया गया किन्तु चूंकि इस मामले में यह माना गया है कि श्रमिक की सेवा मुक्ति की कार्यवाही छंटनी की परिभाषा में नहीं आती है इसलिए उक्त विधि सिद्धांत इस मामले में लागू नहीं होता है। जहां तक तथ्यों का प्रश्न है, श्रमिक का यह कथन सही है कि उसे सेवा से हटाया गया व उस समय कोई अन्य कर्मचारी भी विपक्षी के यहां अस्थाई रूप से कार्यरत था। बकाया क्लेम नाम के कर्मचारी को बाद में 85 दिन के लिए अस्थाई रूप से नियुक्ति देने का तथ्य साक्ष्य के आधार पर साबित माना गया है इसलिए यदि यह साबित हो कि श्रमिक की सेवा मुक्ति की कार्यवाही छंटनी की परिभाषा में आती है तो श्रमिक धारा 25—एच अधिनियम के प्रावधान के अनुसार यह दावा करने का अधिकारी है कि जिस अवधि में बकाया क्लेम को नियुक्त किया गया उस अवधि के लिए श्रमिक के बराबर अधिकार को प्राथमिकता के आधार पर नियुक्ति दी जाये।

9. निगम के जवाब में केन्द्रीय न्यायाधिकरण के एक निर्णय को संदर्भ दिया गया है व यह बताया गया है कि उसके अनुसार अस्थाई रूप से नियोजित कर्मचारियों को प्रार्थना पत्र प्रस्तुत करना आवश्यक था किन्तु ... निर्धारित अवधि में दिया

जाना संभव नहीं था। उक्त निर्णय की प्रतिलिपि निगम की ओर से प्रस्तुत नहीं की गई है। साक्ष्य जो दोनों पक्षों को उपलब्ध हुई है उसमें इस प्रकार का कोई तथ्य प्रस्तुत नहीं हुआ है व इसके अलावा जो विवादित निदर्श्यात हुआ है उसके अनुसार यह विनिश्चय करने का न्यायाधिकरण का क्षेत्राधिकार नहीं है कि केन्द्रीय न्यायाधिकरण के निर्णय के अनुसार श्रमिक कोई भी राहत प्राप्त करने का अधिकारी है या नहीं यह तथ्य दोनों पक्षों की ओर से स्वीकार किया गया है कि श्रमिक को 22-5-89 से स्थाई रूप से नियुक्ति चतुर्थ श्रेणी कर्मचारी के पद पर दी जा चुकी है। इसके अलावा कोई भी अनुतोष इस विवाद में श्रमिक प्राप्त करने का अधिकारी नहीं है।

9. निर्देशित विवाद में अधिनिर्णय इस प्रकार किया जाता है कि विपक्षी जीवन बीमा निगम द्वारा श्रमिक देवीलाल की सेवाएं 6-10-84 से समाप्त करने की कार्यवाही उचित एवं वैध है व श्रमिक कोई भी अनुतोष प्राप्त करने का अधिकारी नहीं है।

10. अधिनिर्णय आज दिनांक 17-4-95 को लिखाया जाकर सुनाया गया जो केन्द्र सरकार को प्रकाशनार्थ नियमानुसार भेजा जावे।

के. एल. व्यास, न्यायाधीश

नई दिल्ली, 22 जनवरी, 1996

का.आ. 375.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मद्रास पोर्ट ट्रस्ट के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों (प्रतिनिधित्व मद्रास पोर्ट ट्रस्ट इम्प्लाइज यूनियन) के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार मध्यस्थ के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-1-1996 को प्राप्त हुआ था।

[संख्या एल-33013/2/94-आई.आर. (विविध)]

के. वि. बी. उन्नी, डैस्क अधिकारी

New Delhi, the 22nd January, 1996

S.O. 375.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Arbitrator, in the industrial dispute between the employers in relation to the management of Madras Port Trust, Madras and their workmen represented by Madras Port Trust Employees Union (MPTEU) which was received by the Central Government on the 2nd January, 1996.

[No. L-33013/2/94-IR(Misc.)]

K. V. B. UNNY, Desk Officer

AWARD

of the Arbitrator

in the Industrial Dispute between MPT and MPTEU

1. By its order No. L-33013/2/94—IR (Misc.) dated 5-9-94, the Government of India in the Ministry of Labour published, in pursuance of sub-section (3) of section 10A of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act), the Arbitration Agreement entered into, under sub-section (1) of section 10A of the Act, between the management of the Madras Port Trust (MPT) and their workmen represented by the Madras Port Trust Employees Union (MPTEU).

2. Under the Agreement, I was appointed as the Arbitrator in the dispute.

3. The Arbitration is in respect of a total of eight items in dispute, the most important of which, as accepted by both the parties in item 1, relating to introduction of incentive scheme(s) for maintenance workers of specified categories.

4. The Arbitration which was to have been completed within three months of the date of publication of the Agreement could not be completed in time and the parties had extended the time limit from time to time and the last extension was upto 31-12-95.

5. A total of 10 hearings was held, all in the Board Room of the MPT and in each of the hearings, both sides were present. As no notification under subsection 3A of Section 10A of the Act appears to have been issued by the Government, no other party appeared before me at the hearings.

6. At the outset, let me express my appreciation of the thoroughness with which both sides have prepared their statements, rejoinders, etc., and presented their points of view before me. It was most gratifying to notice the constant consultations that had been taking place between the parties on the issues referred to my Arbitration, and the understanding that, evidently, prevails between the parties.

7. At the very first hearing, it was agreed to by the parties that there will be no piecemeal awards on individual items in dispute, that 'capacity to pay' is not an issue and that reprecussions on other major ports is not a relevant consideration.

8. Item 1

Whether the demand of the workmen for introduction of incentive scheme or schemes for workers employed in the following shops/sections is justified and if so, approve or modify the scheme or schemes suggested by either party or an independent agency such as the National Productivity Council or the Arbitrator himself frame such scheme or schemes taking into account currently obtaining circumstances with the express objective of increasing the productivity including inter-port relativities of earnings under incentive/payment by result schemes, and consequent on doing so, specify the date from which each of the schemes should be given effect to (prospective or retrospective) but not earlier than 1-4-94 or specify the relief to be allowed to the workers if it is not feasible to give retrospective effect to any of such scheme where retrospective effect is justified.

Whether it is rational and feasible to introduce an incentive scheme or schemes for categories of workers in the Electrical and Mechanical Department who are engaged in maintenance and related activities performing several types of work where the measurement of work performed is difficult.

If there is any justification for the introduction of the incentive scheme or schemes for any of the workmen mentioned below, the Arbitrator may fix the base standard wherever feasible, taking into account the normative basis or standard output which a group of workers is capable of achieving in a given period of time, and also to determine the type of incentive scheme and the rate of incentive payable for the performance achieved beyond the base standard which may be fixed :—

I(A) The workers employed in the shops engaged in the maintenance of cargo handling equipment in the Electrical and Mechanical Department, viz. ;—

(i) Diesel Fork Lift Trucks

(ii) Mobile Cranes

(iii) Electric Cranes

(iv) Electric Fork Lift Trucks and

(v) Heavy Equipments

(B) The workers employed in the repair and maintenance of Floating Craft, which include :—

(i) Floating Craft Shop

(ii) Electrical Section attached to Floating Craft Shop (I Zone)

(iii) Riveting Shop

(iv) Welding Shop

(v) Planning and Design cell (Marine Workshop)

(vi) Floating Craft Service Station

(vii) The crew of Floating Craft under the control of Electrical and Mechanical Department.

(C) The workers employed in the Electrical and Mechanical Department in the following shops/sections which are allied to the cargo handling equipment and maintenance shops :

(i) Machine Shop

(ii) Blacksmithy Shop

(iii) Internal Combustion Engine Shop

(iv) Foundry Shop

(v) Chain Testing Shop

(vi) Wilding Shop

(vii) Power Supply, and the several electrical shops and electronic stations linked to the maintenance shops.

9. As in the case of several other items, this item also had its origins in the eighties. The National Productivity Council (NPC) was commissioned by MPT to study, inter-alia, the operations in the various shops of the Electrical and Mechanical Department (EMD) and to formulate appropriate incentive scheme(s) which will help increase the productivity and thus result in better availability of various cargo handling equipment maintained by EMD. NPC report, received in 1985, was discussed by MPT with the union (EMPTEU) and agreed proposals were sent in February 1988, in two batches, to Government of India, Ministry of Surface Transport, for approval. After a considerable delay, the Ministry gave its approval, in August 1993, to the introduction of incentive scheme subject to certain conditions.

10. However, MPTEU which because of the delay in processing the proposals, has been agitating for referring this matter as also others to arbitration, did not accept the scheme, as was sent in 1988, on the ground that circumstances had changed during the intervening five years and that the matter be referred to arbitration, as had been demanded by it for long. MPT, though, is of the view that the circumstances have not so changed as to materially affect the basic principles of the incentive schemes as formulated. Be that as it may, the matter has been now referred to arbitration.

11. Both parties took time to work out, if possible, agreed proposals that may be jointly presented to me for acceptance and for giving an award on those terms. However, this was not possible. MPT gave a set proposals based essentially on the NPC report and the earlier 1988 proposal but with certain modifications; on these proposals, MPTEU furnished its comments and also gave a set of alternate proposals.

12. Before I proceed to examine these two sets of proposals and evolve incentive payment schemes for the various categories of workers covered by this item, there are a few points of general interest which may be disposed of first.

13. The terms of reference on this item include a part which requires me to examine whether it is rational and feasible to introduce an incentive scheme or schemes for categories of workers in the Electrical and Mechanical Department who are engaged in maintenance and related activities performing several types of work where the measurement of work performed is difficult. The short answer is that it is both necessary and possible. Necessary, for the reason that if Madras Port claims to be the most efficient and mechanised among the major ports of India, a large share of the credit for this must go to the maintenance workers who keep the equipment in good repair with the least breakdown among Indian Ports, despite a steady reduction in manpower, over-aged equipment, some of which are well beyond their prescribed life time and a reduction of overtime. That being so, there can be no reason to deny them incentives, particularly when the users of the equipment, namely the operating workers are entitled to incentive payments and whose performance, and therefore earnings, are directly relatable to the quality of maintenance and availability of the equipment in needed numbers. Lest it be argued that all the employees of the Port Trust get productivity linked bonus annually, that such bonus, indicative of the overall performance of the ports, contains adequate reward for the performance put in by all, including the maintenance workers and that no separate incentive scheme appears called for, the answer is that, in that case, there can be no justification either for paying the operating staff like cargo handling workers, computer terminal workers and other being covered by any incentive schemes; and that is not anybody's case.

14. As for difficulty of measurement of work performed, the Report of NPC, the proposals submitted before me by MPT and MPTEU and my award on this item are sufficient proof that incentive schemes can be worked out for maintenance staff, either in a direct manner or indirectly.

15. The term of reference on this item lists out three sets of workers under 1(A), (B) and (C), each of these having five or more sub categories (shops). I would like to point out that item 1 (A) consists of five shops and significantly excludes the sixth, namely, maintenance shop dealing with Diesel locomotives, which was covered by an earlier proposal sent by MPT on 10-12-87, as can be seen from the covering letter of MPT dated 12-2-88 which contained proposals for the five shops now included in 1(A). Presumably this is for the reason that MPTEU does not represent workers in the Diesel locomotive maintenance shop, which as seen from para 4 of Ministry's letter of 26-7-90, is represented by the Madras Port Railway men's Union. It may also be mentioned in passing that Government of India's orders dated 2nd August 1993 include workers in this shop. To complete this story, it is enough for purpose of record to give an extract from the letter dated 26-3-90 of the Ministry: "Similarly arbitration agreement can also be entered with the Madras Port Railwaymen's Union, which is also recognised union in respect of the scheme or schemes covering the workers among whom the union is having majority following." In the event, this category of workers i.e. those in the Diesel Locomotive Maintenance Shop are not covered by the Arbitration Agreement.

16. Also, as may be seen from MPT's statement, item 1(B) (vi) relating to Floating Craft Service Station has been left out for the reason that "The Floating Craft Service Station (item vi) is not under the control of the Electrical and Mechanical Department at present and is totally under the control of the Deputy Port Conservator namely Marine Department. Hence no scheme for this shop is proposed under this arbitration." MPTEU also has in its statement not covered this category in item 1B (vi). In view of this, this award does not cover the workers in Floating Craft Service Station.

17. In item 1(C) there are seven shops mentioned in the term of reference. Carpentry shop is not found in it; however MPT's statement mentions carpentry shop in its submission on page 14 along with blacksmith, foundry and winding shop. MPTEU has not specifically referred to this in its statement. I am, however, including Carpentry shop also in the award as far as shops in item 1(C) are concerned. In passing, I may mention that in Appendix XIII of MPT's statement, in column 8 the word 'Carpentry' must be replaced by 'Internal Combustion', carpentry figures rightly in column 9.

18. I am also required to take "into account currently obtaining circumstances with the express objective of increasing the productivity including intraport relativities of earnings under incentive/payment by results scheme, and consequent on doing so, specify the date from which each of such schemes should be given effect to (prospective or retrospective) but not earlier than 1-4-94 or ....." The expression "intraport relativities of earning ...." in the first part of the above extract came up quite frequently during the hearings, especially from MPTEU, which never failed to point out that listed workers of Madras Dock Labour Board, Coupling Porters and other Loco Staff of MPT railways, etc., earn on an average over three thousand rupees per month, for work which is not all that strenuous or skilled; that "The Madras Port Administration has officially proposed to the Unions recognised as representative of Labour by the Madras

Dock Labour Board, that if they agree to merge the Madras Dock Labour Board Labour with Madras Port Trust, that the current piece rates for conventional Cargo will be revised as liberally as agreed to at the Bombay resulting in steeply increased piece-rate earnings". To get an idea of the levels of incentive earnings of several categories of workers of Madras Port, I called for particular of such earnings for the months of June 1995 and July 1995 earned by two representative sample of workmen in each category for whom incentive payment system is in vague. The details received from MPT were also furnished to MPTEU and these cover a wide variety of workers such as tally clerks and Shore Labour Mazdoor of the traffic department; Shed Master, Assistant Shed Master and others of traffic department covered by the Berth Throughput Incentive Scheme; various categories of staff engaged in loco operations; categories staff in Container terminal; deckside and engine side crew of a dredger; and various categories of setuff in Container handling and ore handling. Excepting for the category engaged in loco operation, in respect of whom the incentive earnings seem to be a class apart, in all other categories, the earnings on an average work out to about Rs. 200 to Rs. 500 per month, though there are certain categories in certain departments where earnings appear to be in the region of about Rs. 750 per month. What is more relevant, in my opinon, is the level of incentive earnings by the operational groups of workers in the Electrical and Mechanical Department as it is for the repair and maintenance of equipment used by these workers that the various categories of workers covered by this item of arbitration are employed; and, in respect of these workers, the deails furnished by MPT for June 1995 show that, expect for the diesel loco drivers who as already mentioned are a class apart in respect of incentive earnings, the rest of workers numbering 75 for whom figures are available, seem to have received incentive earnings, ranging from a low Rs. 17.48 to a high Rs. 1530.00 in June, with over 30 workers getting around Rs. 250 as incentive earnings. If I am referring to this particular section of workers in some detail, it is for the reason that there must be some correlation between the maintenance workers' emoluments and those of the operational workers who use the equipment repaired and maintained by the former. I would take these figures first for comparison for the purpose of inter-port relativities, before looking at the figures of incentive earnings of other categories. I also find that the incentive earnings of the deck side and engine side crew of Dredger Colcroon are also at a comparable level ranging between a low Rs. 293.59 to a high Rs. 504.57. Therefore, in deciding on a scheme or schemes of incentive earnings for the categories covered under item 1, I would be guided, for purposes of intra-port relativities, by the levels of earnings of above mentioned operational categories in the container terminal ore handling plant, floating craft etc. In coming to this decision, I am also keeping in mind the fact that the categories of maintenance workers now covered under this item are being brought under an incentive scheme for the first time and it is only appropriate that the incentive earnings under schemes for this purpose do not go considerably out of step from the earnings of the related operational workers.

19. As regards the date from which the scheme or schemes for these categories of maintenance workers will be given effect to, I am of the view that it can be with effect from 1-4-94, the earliest date specified in the terms of reference. It must be remembered that these are matters that have been pending a decision from at least 1988 onwards when the first set of agreed proposals were submitted to Government of India for approval. I am also told that the necessary data are available with MPT, to enable it to make the calculations, I therefore, decide that effect be given to the schemes as indicated below, from 1-4-94 and the incentives earnings for the period 1-4--94 to 31-12-95 as calculated be paid to the eligible workers before 30-6-96; current incentive earnings, as from 1-1-96, will of course be calculated and paid, according to the current practice in MPT.

20. Coming to the crux of the matter, namely, the introduction of appropriate incentive scheme or schemes for the categories of workers covered by the item, there are, so to say, four models before me to choose from and/or to modify or to evolve appropriate scheme(s) myself. Firstly, there are the schemes worked out by NPC, secondly there are the schemes submitted in 1988 by MPT inconsultaion with MPTEU to Goverament for approval, thirdly the proposal made by MPT before me which deviate from earlier proposals in certain matters and lastly the proposal from MPTEU tained in MPT statement.

21. As the second proposal, submitted in 1988 and on which government approval was given in 1988, had already been rejected by MPTEU leading to the current arbitration, I am not considering either this second proposal or its precursor, viz., the NPC Report. The third proposal, by MPT, contains some chances from the NPC Report. A basic change, with which MPTEU is also in agreement, relates to the norm or datum in respect of Section 1A; whereas NPC had stipulated 30 per cent of the fleet strength of the concerned type of equipment, MPT has adopted the concept of Average Minimum Basic Demand and payment of maximum incentive for keeping in commission 25 per cent more than the Basic Demand. MPT does not agree with MPTEU's suggestion that equipment kept ready over and above this 25 per cent excess should be paid double incentive rate; I agree with the logic of this objection. The main point of disagreement between MPT and MPTEU relates to the rate of incentive which according to MPT should be related to 40 per cent of the mid-point of the Basic Pay Scale of a Grade II skilled employee MPTEU emphatically opposes this proposal as "it will provide an incentive which is very much lower than being paid to operational, less skilled categories such as coupling porters and labour under the control of Madras dock Labour Board....." MPTEU suggests that the daily hire changes for different kinds of equipment, derived from the port's current hire charges, be made the basis, and on the basis of a factor which will result in a monthly incentive earnings comparable to the earnings of the operational categories covered by piece rate schemes. Rightly, in my view, does MPT object to any scheme being related to hire charges "as the hire charges is based on various factors like capital cost, maintenance cost, operational cost, storage charges, profit, etc. hence, paying an incentive based on the hire charges will in turn result in paying double the charges for even keeping the plant in commission and if at all incentive has to be based on hire charges only the profit element should be taken. In this connection, kind attention of the arbitrator is invited to the fact that even in our earlier accepted proposal the cost worked out is only a fraction of the hire charges and not the total hire charges, as proposed now by the Union."

22. If I have quoted at some length the passage above from MPT's rejoinder, it is not only to indicate my agreement with MPT's views for not adopting the hire charges as the basis, but also to comment on the last sentence of the extract above, as an example of the element of adhocism in the various formulations. In the earlier proposal of MPT, made to government in 1988 after discussion with the MPTEU, the rate of incentive, worked out keeping in view certain factors, was fixed for different kinds of equipment at different rates per extra shift worked over the datum, as for example at s. 100 for Diesel Fort Lift Trucks, Rs. 400 for Heavy Equipment, Rs. 60 per Electric Fort Lift Trucks and so on. Different rates were fixed for different types of equipment, it appears, essentially to result in more or less comparable incentive earnings as between one set of workers and another, as seen from the calculation enclosed to the proposals of 1988. simular adhocism is also evident in MPTEU's proposals based on hire charges, where the incentive rate is proposed as a percentage of the hire charges which varies from 100 per cent in respect of diesel Fort-Lift Trucks, 55 per cent for Mobile Cranes, 35 per cent for Electric Wharf Crane, 100 per cent for Electric Fort-ift to 75 per cent for Heavy Equipment: these variations in percentages have been adopted by MPTEU to "result in a monthly incentive earnings comparable to the earnings of the onertional categories covered by price-rate schemes". Even MPT in its proposals, based on the median rate of wages for grade II skilled employee, is not free from this adhocism, as may be seen from the working sheets in Appendix V, VI, VII etc. of MPTs statement: the cost per shift varies from s. 167 for Diesel Fort-Lift-Trucks, to Rs. 250 for Mobile Cranes, Rs. 350 for Electric Cranes, Rs. 167 for Electric Fort-Lift Trucks and Rs. 250 for Heavy Equipment, essentially to lead to comparable levels of incentive earnings for workers in the different shops. That, within a shop, the rate of incentive earnings for a month is the same for all the employees is again based on this

attempt at parity. While absolute parity is possible within each shop, it is not possible, on the basis of a formula, to achieve this total party as between different shops.

23. Taking all these factors into account including what I have already in para 13 above about intra-port relativities, I am inclined to accept the proposals of MPT subject to the changes indicated below and evolve an incentive scheme on those lines for all the employees covered by Section 1(A) i.e. those engaged in the maintenance of cargo-handling equipment in the Electrical and Mechanical Department, viz.,

(i) Diesel Fork Lift Trucks

(ii) Mobile Cranes

(iii) Electric Cranes

(iv) Electric Fork Lift Trucks, and

(v) Heavy Equipments

The changes or modifications to MPT's proposals are the following :

(a) A specified Chargeman/Foreman/Supervisor or a Class Officer is the CME Department should be required to certify that the concerned numbers of equipment are fit to be deployed in respect of the Demand by the Traffic Department for the concerned day or shift.

(b) The equipment supplied to Traffic Department shall not be deleted for incentive if the defect is rectified within the shift, as per conditions indicated in the original proposal.

24. Coming now to proposals in respect of categories under Section 1(B) i.e. those workers employed in the repair and maintenance of Floating Craft, viz.,

(i) Floating Craft Shop

(ii) Electrical Section attached to the Floating Craft Shop (J Zone)

(iii) Rivetting Shop

(iv) Welding Shop

(v) Planning and Design Cell (Marine Workshop)

(vi) Floating Craft Service Station

(vii) The crew of Floating Crane under the control of the Electrical and Mechanical Department;

as already indicated in Para above, serial number (vi) above is not being dealt with, for want of any propsal. MPT has proposed a common scheme for (i) and (ii) and another for (vii), while (iii), (iv) and (v) have been bunched together as indirect shops. This approach is acceptable to MPTEU. It is proposed by MPT and accepted by MPTEU that as far as (iii), (iv) and (v) are concerned, the employees in these shops will be entitled to 90 per cent of the incentive earned for the month by the Floating Craft Shop. I accept this and decide accordingly. As regards (i) and (ii), the main point of difference is, as in the case of Section 1A, that whereas the basis for calculating the incentive wage was the median basic pay in MPT's proposal, it is 25 per cent of the pilotage and other fees as fixed by the Madras Port Trust. For the reasons already indicated by me in respect of Section 1A, I am inclined to accept the proposals of MPT and I therefore decide accordingly that the incentive scheme for these two shops, namely Floating Craft Shop and Electrical Section attached to Floating Craft Shop (J Zone) be worked out on the basis of the proposals including Appendix X of MPT's statement. As for (vii), i.e., Floating Crane, Vaigai, again there is difference in the proposals submitted by MPT and MPTEU. MPT has a two parameter formula, one relating to the fulfilment of overall demand and the other to the productive use of the Crane, in the ratio of 70 : 30. MPT also has adopted the median basic wage as the base for calculating incentives earnings. MPTEU, on the other hand, has predictably adopted 20 per cent of the hire charges as the base for calculating incentive payment and thus worked out a scheme as would provide a monthly incentive earning of over Rs. 3000 per worker. In this case again, as in other cases, the proposals of MPT commend themselves to me and I therefore direct that an incentive scheme on the basis of MPTs proposals including Appendix XI be adopted for the Floating Crane, Vaigai.

25. Lastly we come to the employees of the shops in Section 1(C), viz.,

(i) Machine Shop

(ii) Blacksmithy Shop

(iii) Internal Combustion Engine Shop

(iv) Foundry Shop

(v) Chain Testing Shop

(vi) Winding Shop

(vii) Power Supply and the several Electrical Shops and Electronic Section linked to the maintenance Shops

MPC had evolved a complicated scheme involving considerable amount of calculation. To avoid this, MPT had proposed a three tier arrangement of incentive payment system under which (i) and (iii) above i.e. Machine Shop and Internal Combustion Engine Shop be paid 80 per cent or the incentive paid to the Cargo handling Equipment Shops; (ii), (iv) (vi) and Carpentry Shop be paid 60 per cent; and the rest namely (v) and (vii), paid at 40 per cent of the incentive paid to Cargo anding Equipment Shops. MPTEU while welcoming the simplified scheme proposed by MPT had suggested, instead of 80 per cent, 60 per cent and 40 per cent, a higher percentage namely 90 per cent for (i) and (iii) and 80 per cent of the rest. MPT argues that (i) and (iii) cater to only certain aspects of maintenance work while the regular maintenance shops carry out much more work in addition to taking care of day today routine maintenance in various service stations and for those reason 90 per cent will be too high and 80 per cent will be appropriate. I accept this stand of MPT and accordingly direct that (i) and (iii) be paid 80 per cent of the incentive paid to Cargo Handling Equipment Shops. As regards the rest, including Carpentry Shop, I accept the 60 per cent formula of the MPT in respect of (ii), (iv), (vi) and Carpentry Shop, but raise the percentage from 40 per cent to 50 per cent in respect of the rest, i.e., (v) and (vii).

MPTEU had also suggested that "in respect of other workshops not related to any direct incentive all of them be allowed 70 per cent of all other shops". As this is outside my terms of reference, I am not giving any decision on this except to suggest to MPT that they may, in the light of this award, like to work out simple incentive schemes for other maintenance workshops.

26. I also suggest that the incentive schemes as worked out on the lines indicated above may be reviewed after these had been working for about 6 months to sort out any operational problems that may arise in their implementation.

27. Item 2

"Whether the demand relating to non-grant of wages for weekly off day to the class III and clas IV workmen due to any of the days during the six days preceding the weekly off being treated as 'dies non' on account of strike, bandh, etc., requires legal interpretation taking into account the provisions in the Minimum Wages Act, 1948 and the Rules framed thereunder."

28. The main arguments advanced by MPTEU in favour of doing away with the practice of denial of weekly off day wages if any of the previous six days is treated as 'dies non' because of strike or bandh etc., are as follows :

(a) this practice is based on the first proviso to Rule 23(1) of the Minimum Wages (Central), Rules 1950 according to which the employee in the scheduled employment should have worked for a continuous period of not less than six days, for being entitled to weekly day of rest.

(b) the application of Minimum Wages Act, 1948 and Rules thereunder to MPT employees in anachronism in so far as (i) minimum rate of wages had been fixed decades back and have not been revised, (ii) a large number of categories covered by the earlier notification have ceased to exist, (iii) a large number of fresh categories of employees are not covered by any notification, resulting in well over 4,000 out of 10,000 employees currently in MPT

not covered by the notification, (iv) employees in the Madras Dock Labour Board are not covered by this dispensation (v) the practice obtaining Madras, Bombay and Calcutta Port Trusts is wholly different from that obtaining in other Port Trusts in this regard, (vi) even as between say Bombay and Madras Port Trusts, the daily rate is determined in respect of Bombay Port Trust by dividing the monthly rate by 26 unlike in Madras where the daily rate is arrived at by dividing the monthly rate by 30 (vii) even in respect of Calcutta Port Trust, weekly off day wage is denied to only casual workers and not to a regular employee and (viii) in respect of Cochin Port Trust there is no denial of weekly day off wage in such circumstances.

29. MPTEU has also, for good measure, urged that if the current practice is allowed to be continued, then in respect of all categories covered by the notifications under Minimum Wages Act, the daily rate should be arrived at by dividing the monthly rate by 26 and not by 30 as is the practice now.

30. As against this, the MPT argues that despite the earlier notifications regarding minimum rates of wages not having been revised and despite that all the existing categories today are not covered by the earlier notifications, the validity of the notification and applicability of Minimum Wages Act, 1948 and Rules formed thereunder is not in doubt. Once this is accepted, then there is no escape from the legal consequences of the first proviso to Rule 23(1), which is that the employee to be eligible for the weekly day off wages must have worked under the same employer for a continuous period of not less than six days. Thus, such an employee, in whose case a particular day or days is/are treated 'dies non' consequent on a strike or bandh, will not be eligible for weekly day off wages; such absence will be 'dies non' for other purposes also such as for increment, qualifying period for pension, gratuity and earning of leave, except that this will not be treated as break in service or will also not result in forfeiture of benefits of past service. On the other hand, coverage under Minimum Wages Act, 1948 results in the employees (not merely those for whom minimum rates of wages have been notified) governed by the provisions of the Act in respect of overtime; according to MPT, "Therefore, irrespective of the fact that certain categories have been notified and certain other categories have not been notified, the Port Trust has been following the same principles in computation of overtime, grant of weekly off, payment of rest day wages, etc., for all categories in the Port Trust including Supervisory Categories".

31. In the light of above submissions, let me look at the issue that is to be decided. That the earlier notifications, most of which are more than 40 years old, have not been revised does not legally invalidate them. In fact, the first proviso to Section 3(1) states that "....until they are so revised, the minimum rates in force immediately before the expiry of the said period of five years shall continue to be in force" and has perhaps been enacted to take care of these 'lapses'. To argue that prevailing rate of wages and emoluments in MPT are far and away higher than the normal rates of the highest wages fixed under the Minimum Wages Act 1948 is of no avail as the law enables only the minimum wages to be fixed and also as there is no provision in the law by which an employment once scheduled can be deleted from the schedule (Sec. 27 only enables addition to the schedule and not deletion from the schedule). Notwithstanding this, the basic issue in this is to understand the purpose and intent of the crucial first proviso to Rule 23(1) of the Minimum Wages (Central) Rules, 1950, which reads as follows :—"Provided that the employee has worked in the scheduled employment under the same employer for a continuous period of not less than six days". I think it is necessary to give as much importance to the expression "under the same employer" as to the expression "for a continuous period of not less than six days". We must understand the nature of employment conditions that obtained at the time the law was enacted (1948) and the rules were made (1950) and the nature of employments that were scheduled then. Even if an employee in a scheduled employment might have been employed for a continuous period of six days, it should be under the same employer; otherwise, it is not possible to apportion the weekly day off wages between or among the several employers under whom the employee might have worked during the preceding six days. Thus even if the employee might have worked under the same employer for five out of the preceding six days, he will not be entitled to weekly off day wages, not even proportionately at 5/6 of the daily rate. Thus it would appear that the expression 'under the same employer' in the proviso would make it applicable only to daily rated employees and not to monthly rated regular employees, as in the case with MPT, and as it was the case even in the earlier minimum wage notifications relating to MPT. It is interesting to note from the copies of these notifications that only in the case of casual labourers, and B category and casual labour employed in cargo handling work has a daily rate been notified (vide Ministry of Labour notification dated 30th December, 1954- SRO 3679). In the case of monthly rated employers, the practice obtaining in Calcutta Port Trust as given in the statement of MPT commends itself to me. The position in Calcutta is as follows :—"Calcutta for a regular employee, there is a fixed rest day with wages. Therefore, any strike falling between 2 weekly rest days which is subsequently treated as 'dies non' and the principle of 'no work, no pay' applied, does not affect the payments of wages for the fixed weekly off day. Only in the case of a casual worker, the weekly off day is affected in as much as it is extended and the worker is allowed to enjoy weekly off day with wages only after he has put in 6 consecutive days of work so as to entitled him to paid weekly off day."

32. I therefore decide the issue in favour of the demand of the MPTEU and direct that the practice obtaining in Calcutta Port Trust be followed in Madras Port Trust also. This direction will be given effect to from 1st January, 1996 and will not have any retrospective application. In this view, the alternate claim of the MPTEU to arrive at the daily rate by dividing the monthly rate 26 instead of 30 has no basis, and the existing practice of dividing the monthly rate by 30 to arrive at the daily rate of wages will continue.

33. Item 3

Whether there is any justification in the demand for payment of "Take over" and "Hand over" overtime allowance of 30 minutes to those operational and equivalent categories of workmen employed on round-the-clock shifts in the electrical and mechanical department, including those employees in the container terminal and marine department.

34. According to the MPT, this demand in respect of workers in the round the clock shifts in electrical and mechanical department and those in the container terminal and marine department has been fully complied with and there is no outstanding item of disputes in regard to this issue. This is not seriously contended by MPTEU which however, has been raising larger issues relating to improving the productivity of the port in all its operations, including working on closed holidays and so on. While no doubt these are important matters, they do not arise out of this item under arbitration.

35. On the last date of hearing i.e. on 6th November, 1995, MPTEU stated that it is withdrawing this claim. On this there was a reservation on the part of MPT on the ground that the various items of arbitration had been finalised after detailed consideration by Government also and therefore it is not possible for one side to unilaterally withdraw an item. The Union has followed it, at my instance, with a written submission in the following words :—"(a) That in respect of claim/issue No. 3, relating take over and hand over overtime allowance, I am withdrawing the claim as I am confident that I can settle the issue by direct negotiation, on the basis of proving, as in the case of the Container Terminal, the benefit that can accrue to the Madras Port, which is faced with severe congestion, and its users, through grant of equivalent or superior benefits".

36. I am not inclined to concur with MPTEU's withdrawal of the claim at this last stage. I am aware that in respect of item 3 as also on item 1, there is a N.B. in the Arbitration Agreement to the following effect.—"In respect of the above listed issues of incentive and hand-over take-over overtime either party is free to amend its own proposal/claims and suggest any claims, including accelerated incentive schemes, with the object of ensuring optimum efficiency and be cost effective to all concerned including the users. Parties may

engage their own assessors at their cost of substantiate what they propose will be beneficial". Even so, it is to be recognized that the issues covered by this item, relating to electrical and mechanical department, container terminal and marine department, have already been settled, as pointed out by MPT in its statement May be, MPTEU would want further improvements in this regard but considering that 30 minutes overtime (and in some cases, the overtime is for forty five minutes or for one hour) has already been agreed to, I am not permitting MPTEU to withdraw its claim as in item 3 at this stage. This issue already stands settled. This, however, does not, in any way, restrain either party from raising fresh claims later, consistent with the provisions of the Act and in terms of N.B., with the object of ensuring optimum efficiency and be cost effective to all concerned including the users.

37. Item 4

"Whether there is any justification in the demand for grant of special pay per month to the nurse additionally posted to some of the newly constructed additional Operation Theatres of the medical department as allowed to such staff posted in the Operation Theatre constructed earlier and if so, whether it should be given retrospective effect."

38. It is the admitted case of both the parties, as seen from their statements, that "nurses and theatre assistants posted to Operation Theatre are collectively responsible for safe custody and maintenance of the apparatus, equipment and installation, etc., including the upkeep of the Operation Theatre disinfectant, steriliser and for the operation of the oxygen plant apart from assisting the surgeons in all kinds of operations" (extract from MPTs statement). The Chief Medical Officer who appeared before me at the hearing on this item said that keeping in view the nature of work and responsibility, as well as the costly nature of equipment and life saving drugs and that persons are posted to operation theatre duty depending on their past experience, he would be agreeable to sanctioning special pay to all nurses and theatre assistants posted to operation theatres. The nature of joint responsibility for the safe custody of equipment and drugs and of the proper upkeep of the operation theatres is not disputed. In the circumstances there is justification in the demand.

39. MPTEU stated during the hearing that if the demand is to be confined to only one nurse, the union withdraws the claim. Keeping in view the important element of joint responsibility, the union demands that the sanction of special pay must be for all nurses and theatre assistants posted to work in operation theatres. The union has also stated in its written statement that it is making no claim for retrospective effect.

40. While one cannot sufficiently strongly deprecate any tendency on the part of a party to an arbitration to a conditional acceptance, the insistence of MPTEU to claim the benefit of special pay to all nurses and theatre assistants posted to operation theatres for duty, can be easily understood, in the circumstances of this particular matter. Collective responsibility cannot be expected, except on terms of equality of service conditions for similar categories of employees. Also, the concept of equal pay for equal work would also militate against any indivious distinction between one set of persons and another set, both engaged in the same tasks.

41. I therefore direct that special pay be paid on the existing basis to all nurses and theatre assistants posted for duty in operation theatres, the choice of personnel for such posting being wholly in the discretion of the management, keeping in view their experience, aptitude, capacity to work as a team and so on. This direction will be given effect to from 1st January, 1996.

42. Item 5

Whether there is any justification in the demand for increasing the rate of special allowance paid per case of death occurring in the Port Trust Hospital, to the complement of two Hospital Lascars detailed for handling dead bodies, and if so, what should be the increase in the rate and the date from which the enhanced rate should be given.

43. In the course of the hearing on this item, MPT representative indicated that they had no objection to this demand being granted, provided it is not retrospective in effect. MPTEU representative also agreed not to press for retrospective effect.

44. I see from MPT's statement on this item that its request to the Ministry of Surface Transport for increasing the special pay from Rs. 7.13 per dead body handled by the Hospital Lascars to Rs. 20 was turned down by the Ministry in April 1989. Noting that a 15 per cent increase in special pay and special allowance was agreed to with effect from 1st January, 1993 under the all India wage settlement signed on 6th December, 1994, and keeping in view that the parties have agreed that the award in this case will be only prospective, I direct that the special pay for Hospital Lascars for handling dead bodies in the Madras Port Trust Hospital from the ward to the mortuary and from mortuary to the vehicle be raised to Rs. 25 per body, will effect from 1st January, 1996.

45. Item 6

"Whether the demand for re-designating the Deployable Vehicle Drivers exclusively engaged in the operation of Top Lift Trucks as "Top Lift Truck Operators" and for grant of a higher scale of pay than Rs. 1205—2030 is justified and whether it should be given with retrospective effect."

46. The facts are very simple and straightforward and the claims of MPTEU also quite clear. Apart from claiming redesignation of Deployable Vehicle Drivers (DVD) as Top Lift Truck Operators (TLTO) and grant of a higher rate of pay to them, MPTEU, in its statement, has also claimed promotion opportunities for this category of employees, which, understandably MPT has objected to in its rejoinder. This objection of MPT is, in my opinion valid, as it does not arise out of the issue as framed, for arbitration. I therefore refrain from giving any award on this claim for promotion opportunities

47. As regards the claim for a higher salary for DVDs who have been selected by the MPT for operating Top Lift Trucks, this claim can not be denied on the principle of equal pay for equal work. I therefore direct that the DVDs who are engaged as TLTOs be placed in earlier scale of 710—1202 and in the current scale 2230-75-2605-85-4050. I also direct with reference to the claim for retrospective relief, that their pay be refixed with effect from 1-1-93 (the date from which the present all India Wage setlement is in force) or from date of their continuous functioning as TLTOs, whichever is later, with all the consequential benefits, during the period thest DVDs are continuously performing the duties of TLTOs.

48. As regards redesigning these DVDs as TLTOs, I see a difficulty. The concept of Deployable Vehicle Driver is an extremely useful one, with considerable amount of flexibility available to the administration in deploying them in a manner best suited to an occasion. In fact, this kind of flexibility was agreed to, as stated by MPTEU, at the instance of the MPTEU itself. To quote from MPTEU statement, "Several years ago, contrary to the practice followed in other posts, recommended by the Jeejeebhoy Classification and Categorization Committee, a settlement was reached at the instance of this union for better deployability of cargo handling equipment drivers, as it was noted that allowing different pay scales and different designation depending on the lifting capacity of the equipments resulted in the inefficient utilisation of the equipment drivers....." That being the case, I am not sure that change of designation from DVD to TLTO will not affect deployability; also such change will also add an edge to a demand for promotion opportunities, a matter on which I have aready indicated my reluctance to give an award. I therefore do not agree with this part of the demand; but however, as these DVDs are exclusively working as TLTs, and in fact issue as framed applies to only such DVDs as are exclusively engaged in operation of TLTs as TLTOs, and have been given higher grade as opposed to the common grade to all DVDs their designation may be altered as DVDs (TLTO) i.e. Deployable Vehicle Driver (Top Lift Truck Operator). Such a designa-

tion, however cumbrous, will serve the purpose of separate identity for these employees.

49. Item 7.—Whether there is any justification in the demand for enhancing the rate of equation allowance of rupees 4.50 per day pay to the maistries and mazdoors of shore labour with effect from 1-1-84 and subsequent pay revision.

50. The circumstances leading to grant of equation allowance and its periodic revision for the shore workers of DPT are not in dispute between the parties. That the rate of equation allowance was raised from Rs. 4.50 per day to Rs. 5.18 per day with effect from 1-1-88, in pursuance of para 16 of the wage settlement dated 12-6-89 is also not in dispute. The then existing rate of Rs. 4.50 per day was with effect from 1-1-80, having been revised from the earlier rate of Rs. 2.50 per day. The dispute is about the refusal of the MPT to revise the equation allowance above Rs. 4.50 per day with effect from 1-1-84.

51. Equation allowance was essentially a device by which the difference in daily rate of wages between the shore workers of MPT and similar workers of Bombay Port Trust is sought to be minimised; the difference, in the daily rate essentially stemmed from the practice of arriving at the rate by dividing the monthly rate by 30 in MPT as against 26 in Bombay Port Trust; to offset this difference the concept of equation allowance was evolved way back in 1969 and every time there was a wage agreement for the workers of all major ports, this equation allowance was also got adjusted suitably by upward revision. To an extent this also reduces the gap in the daily rate of wages between shore workers of MPT and the cargo handling workers of Madras Dock Labour Board. However, it would appear, such revision did not the place with effect from 1-1-84; this is for the reason that the notes of discussion of negotiation that took place on the wage structure of port and dock workers held on 9th and 10th April 84 recorded, inter-alia, "5.....The demand for increase or introduction of incharge allowance, equation allwance, etc. in all the ports may be dropped". As one of the signatories to the notes of discussion was Shri S.C.C. Anthony Pillai as the General Secretary of All India Port and DockWorkers Federation and also President of MPTEU, Government of India in the Ministry Surface Transport did not agree to the demand for revision of equation allowance. According to Government of India, " .....It will be appreciated that it is not morally and ethically correct for a union affiliated to All India Port Dock Workers Federation to go back on the understanding and commitment made during the ast wage settlement. If individual unions are thus allowed to re-open issues which were agreed to be dropped at the Federation and Government Level, it will cut at the very roots of bipartite negotiations and settlements....."

52. Despite this stand, it is to be noted that this issue now been referred to arbitration. This is in consequence of a charter of demands raised by MPTEU, with a strike notice the consequent conciliation at the local level, its failure and final conciliation at Delhi by the Chief Labour Commissioner (Central) resulting in a settlement, dated 27-2-1989, one of the terms of which was as follows :—

> "(x) The Union has submitted a claim for enhancing the rate of Equation Allowance paid to the Shore Workers. The Chairmon has agreed to request the Government to reconsider the issue and communicate their decision by 30-4-89". It is in pursuance of this claim that the matter was taken up with the Government by MPT. The reply of the Government to this has already been briefly extracted in the para above.

53. Thus it is clear that the Union had at no stage given up its claim for revision of Equation Allowance with effect from 1-1-1994. As regards the conclusions reached in the notes of discussion held on 9-4-84 and 10-4-84, it is pointed out by MPTEU in its statement that despite this, the final settlement did not incorporate any clause dropping the claim for increase or introduction of in-charge allowance, equation allowance, etc. MPTEU has further given instances of clauses in the notes of discussions which were either rejected or modified when the final settlement was signed on 11-4-84.

54. I have carefully considered the claims and submission of both sides on this question and am of the view that the Union has made a strong case for its demand. The continued course of conduct from 1969 onwards, the increase in the Equation Allowance with effect from 1-1-88 and finally the agreement to refer this issue to arbitration strongly justify the demand. I therefore direct that the rate of equation allowance at Rs. 4.50 per day paid to the Maistries and Mazdoors (Shore Labour) be raised with effect from 1-1-84 and subsequent pay revisions, in step with the increases agreed to in respect of special pay and special allowance in each of the wage settlements, starting from 1-1-84.

There was a demand in the submission by MPTEU that this enhanced allowance be paid to casual shore labour also. However, it was pointed out by MPT during the hearing that there is no casual labour after 1983. That being so, there is no merit in the demand in respect of casual labour.

55. As far as implementation of the direction above for upward revision of Equation Allowance with effect from 1-1-84 to about 1200 on 1-1-89 and is about 1000 now. I lot of clerical work; also, I understand that the number of workers involved has come down from about 1300 on 1-1-84 to about 1200 on 1-1-89 and is about 1000 now. I therefore direct that the benefit be calculated and disbursed only to those eligible categories who were on the rolls of MPT as on 1-1-95.

56. Item 8A.—Whether there is justification in the demand for creation of additional promotion posts, as proposed by the Chairman of Madras Port Trust, in his letter to the Ministry No. IR3|25080|84|S dated 15-10-86 in respect of the following categories of employees as detailed below, in the light of altered circumstances as currently obtaining. (List showing categories and number not reproduced).

57. This again is an issue on which the facts are not in dispute. From the written statements of the parties and their submission during the hearings, it is clear that the expression "in the light of altered circumstances as currently obtaining" occurring in the issue as framed has been the bone of contention. Whereas MPT would want the issue to be decided with reference to the existing situation and has worked out details as on 1-1-95, MPTEU wants this to be decided in its favour with effect being given to the decision from 1st September 1986 which was the out off date adopted by the MPT in making its proposals to Government of India by their letter dated 15-10-86 after discussion with the Union.

58. In between these two dates, i.e. 1-9-86 and 1-1-95, there have been certain developments. The Government in the Ministry of Surface Transport had by their LB12015|23|86.R.O. dated 12-5-1987 issued approval for the creation of 423 posts as personal to the incumbents to be promoted to these posts. This presumably, is to provide promotion opportunities to those employees who had put in 15 or more years of service in the same post without any further promotion. Based on the above criteria, Government had by their letter LB 12013|23|86 R.O. dated 8-5-1989 declined to give approval for providing promotional opportunities to the remaining 777 persons, in respect of when MPT had again raised the issue with the government Finally, by their order in LB-12013|10|90 RO. dated 31-1-91, Government in the Ministry of Surface Transport issued general order to the effect that posts on personal basis may be created for such of the Class III and Class IV employees and workers in all major Port Trusts and Dock Labour Boards who have put in 15 years or more of service in the same scale as on 31-3-90 subject to certain conditions. In the light of this general decision, the separate proposal of the MPT was not further processed by the Government. However, this issue has now become the subject matter of this arbitration

59. Whereas the general decision of Government will apply to employes who have been in the same scale for 15 years or more, the criteria adopted by MPT in their proposal of 15.10.86 are different. In the words of MPT in their statement, which is not disputed by MPTEU, the logic and criteria adopted by MPT are as follows : ".....It was noted

that a person gets promoted to the next higher grade in the normal course in the hierarchy only after he completed a period of not less than 10.8 years. He gets the second level of promotion after completing another block of 10 to 15 years. So when a person enters the second level of promotion in the hierarchy, he would have completed at least 20 years of service.

Therefore while considering these stagnated persons in the first level promotional posts, an exercise has been done to cover only those who have completed a total service of more than 20 years in the categories of clerk|junior assistant (LDC|UDC). This principle has been applied in the case of employees holding the posts of Junior Assistant|Senior Works Clerk|Senior Storemen|Senior Nurses|Assistant Cashier| Senior Signalman|Compling Port Grade I|Record Draftsman| Head Gardener, etc.

A second exercise was done in the case of persons who already had two to three levels of promotion after entry, that is for those who were holding the posts of Assistant Superintendent|Senior Assistant (Works)|H.S. Grade II|Artisan| Senior Stores Supervisor|Stores Supervisor|Hospital Surgeant| Cashier|Signal Boatswain|Stenographer Grade I, etc. a total service of 28 years has been taken as a criterion for considering them for further promotion."

60. Thus, the criteria adopted by the Government and that adopted by MPT are different, and prime facie, it looks as though MPT criteria are more logical, in so far as it is based on the experience so far and in so far as it seeks to distinguish between first level and subsequent promotions. Be that as it may, the expression "in the light of allowed circumstances as currently obtaining" would have to be given its due weight. Apart from the fact that MPTEU has been pursuing this issue right through, there is the development of Government's general decision by its order of 31-1-91, with a cut off date of 31-3-90.

61. Taking all these aspects together, I think it will be fair to decide that the proposals sent by MPT on 15-10-90 be given effect to, adopting the cut off date of 31-3-90. I decide accordingly. The management may therefore rework their proposal keeping 31-3-90 as the cut off date. I am aware this entails a certain amount of work but I am afraid it can't be helped. The resulting benefit may be paid to eligible persons not later than 31-5-96.

62. Item 8B

"Whether in the case of the category of Assistant Technicians, the workers possesing NAC certificate in skilled Trades, issued after a stipulated period of training of about 3 years and a test conducted by a Governmental Authority, and who from the date of initial recruitment are deployed for performance of all toypes of tasks, skilled and unskiled, should be allowed the benefit of promotion to Technician Grade III from the date they complete 5 years of satisfactory services and whether the promotion in respect of other categories should be given effect from the first of the month following the date the Chairmain of Madras Port Thrus submitted the purposeals, agreed to discussion with the Union, to the Ministry.

63. The need for providing a promotion avenue to this category of employees is not disputed either by MPT or MPTEU. Therefore, the first part of the issue is answered in the affirmative; however, keeping in view my decision on items 8A, this will also be with effect from 31-3-1990.

64. As regards the second part of the item, relating to "promotion in respect of other categories ...", MPTEU argued that this will include all other categories listed out in Item 8A. This is, to say the least, preposterous. MPT's interpretation that it refers to other categories such as greasers, hammermen, etc. to which posts some of the Assistant Technicians have got transferred| promoted, is logical and acceptable; I therefore hold that the item 'other categories' should be interpreted ejusdem genesis with Assistant Technicians.

65. A point that was raised by MPT was that under the second All-India Wage Settlement dated 6-12-94, it was agreed, inter-alia, that the classification and categorization of workers of the basis of job evaluation and removal of anomalies and inequities will be settled by Chakravarthy Committe at thd National level, failing which through arbitration or adjudication, as acceptable to the parties. I understand that Chakravarthy Committee at the National level, failing which through should, this item will go outside its purview, as the matter has been determined by me in arbitration under section 10A of the Act.

66. Lastly, In case of any difference of opinion between the MPT and MPTEU in interpreting any portion of the award, the parties are free, if they so choose, to approach me for interpretation, which, I take it will be accepted by both the parties.

I pass an award on the above terms on all the items referred to my arbitration.

T. S. SANKARAN, Arbitrator

नई दिल्ली, 23 जनवरी, 1996

का.आ. 376.—केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 91-क के साथ पठित धारा 87 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, और भारत सरकार के श्रम मंत्रालय की अधिसूचना संख्या का.आ. 494 दिनांक 2 फरवरी 1995 के अनुक्रम में, मैसर्स हिन्दुस्तान लोटक्स लि., काझागला, बैलगांव को उक्त अधिनियम के प्रवर्तन से प्रथम जनवरी, 1996 से 31 दिसम्बर, 1996 तक की अवधि के लिए जिसमें यह तारीख भी सम्मिलित है, छूट देती है।

2. उक्त छूट निम्नलिखित शर्तों के अधीन है, अर्थात् :—

(1) उक्त कारखाने का नियोजक उस अवधि की बाबत जिसके दौरान उस कारखाने पर उक्त अधिनियम प्रवृत्त था (जिसे इसमें इसके पश्चात् उक्त अवधि कहा गया है), ऐसी विवरणियां ऐसे प्ररूप में और ऐसी विशिष्टियों सहित देगा जो कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के अधीन उसे उक्त अवधि की बाबत देनी थी,

(2) निगम द्वारा उक्त अधिनियम की धारा 45 की उपधारा (1) के अधीन नियुक्त किया गया कोई निरीक्षक या उस निमित्त प्राधिकृत निगम का कोई अन्य पदधारी,—

(1) धारा 44 की उपधारा (1) के अधीन, उक्त अवधि के लिए दी गई किसी विवरणी की विशिष्टियों को सत्यापित करने के प्रयोजनों के लिए, या

(2) यह अभिनिश्चित करने के लिए कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 द्वारा यथा अपेक्षित रजिस्टर और अभिलेख उक्त अवधि के लिए रखे गये थे या नहीं या

(3) यह अभिनिश्चित करने के प्रयोजनों के लिए कि कर्मचारी, नियोजक द्वारा दी गई उन प्रसुविधाओं को, जो ऐसी प्रसुविधाएं हैं जिनके प्रतिफलस्वरूप इस अधिसूचना के अधीन छूट दी जा रही है, नकद और वस्तु रूप में पाने का हकदार बना हुआ है, या नहीं,

(4) यह अभिनिश्चित करने के प्रयोजनों के लिए कि उस अवधि के दौरान, जब उक्त कारखाने के संबंध में अधिनियम के उपबन्ध प्रवृत्त थे, ऐसे किन्हीं उपबन्धों का अनुपालन किया गया था या नहीं।

निम्नलिखित कार्य करने के लिए सशक्त होंगे :—

(क) प्रधान नियोजक या अव्यवहित नियोजक से यह अपेक्षा करना कि वह उसे ऐसी जानकारी दे जो वह आवश्यक समझे, या

(ख) ऐसे प्रधान नियोजक या अव्यवहित नियोजक के अधिभोग में के कारखाने, स्थापन, कार्यालय या अन्य परिसर में किसी भी उचित समय पर प्रवेश करना और उसके भारसाधक व्यक्ति से यह अपेक्षा करना कि वह व्यक्तियों के नियोजन और मजदूरी के सन्दाय से संबंधित ऐसे लेखा बहियां और अन्य दस्तावेज, ऐसे निरीक्षक या अन्य पदधारी के समक्ष प्रस्तुत करें और उनकी परीक्षा करने दे या वह उसे ऐसी जानकारी दे जो वह आवश्यक समझे, या

(ग) प्रधान नियोजक या अव्यवहित नियोजक को, उसके अभिकर्ता [illegible] या ऐसे किसी व्यक्ति को जो ऐसे कारखाने, स्थापन, कार्यालय या अन्य परिसर में पाया जाए, या ऐसे किसी व्यक्ति कि जिसके बारे में उक्त निरीक्षक या अन्य पदधारी के पास यह विश्वास करने का युक्तियुक्त कारण है कि वह कर्मचारी है, परीक्षा करना, या

(घ) ऐसे कारखाने, स्थापन, कार्यालय या अन्य परिसर में रखे गये किसी रजिस्टर, लेखाबही या अन्य दस्तावेज की नकल करना या उससे उद्धरण लेना।

[सं. एस.-38014/7/93-एस.एस.-1]

जय प्रकाश शुक्ल, अवर सचिव

New Delhi, the 23rd January, 1996

S.O. 376.—In exercise of the powers conferred by Section 87 read with Section 91-A of the Employees' State Insurance Act, 1948 (43 of 1948), and in continuation of the Notification of the Government of India, Ministry of Labour No. S.O. 494 dated 2nd February, 1995, the Central Government hereby exempts M|s. Hindustan Latex Limited, Belgaum-25 from the operation of the said Act for a period of one year with effect from the 1st January, 1996 up to and inclusive of the 31st December, 1996.

2. The above exemption is subject to the following conditions, namely :—

(1) The employer of the said factory shall submit in respect of the period during which that factory was subject to the operation of the said Act (hereinafter referred to as the said period): such returns in such form and containing such particulars as were due from it in respect of the said period under the Employees State Insurance (General) Regulations, 1950.

(2) Any Inspector appointed by the Corporation under sub-section (1) of Section 54 of said Act or other official of the Corporation authorised in this behalf shall, for the purpose of :—

(i) verifying the particulars contained in any return submitted under sub-section (1) of Section 44 for the said period; or

(ii) ascertaining whether registers and records were maintained as required by the Employees' State Insurance (General) Regulations, 1950 for the said period, or

(iii) ascertaining whether the employees continue to be entitled to benefits provided by the employer in cash and kind being benefits in consideration of which exemption is being granted under this notification, or

(iv) ascertaining whether any of the provisions of the said Act has been complied with during the period when such provisions were in force in relation to the said factory;

be empowered to :—

(a) require the principal or immediate employer to furnish to him such information as he may consider necessary; or

(b) enter any factory, establishment, office or other premises occupied by such a principal or immediate employer at any reasonable time and require any person found incharge thereof to produce to such Inspector or other official and allow him to examine such accounts, books and other documents relating to the employment of persons and payment of wages or to furnish to him such information as he may consider necessary; or

(c) examine the principal or immediate employer, his agent or servant or any person found in such factory, establishment, office or other premises or any person whom the said Inspector or other official has reasonable cause to believe to have been an employee; or

(d) make copies of or take extracts from any register, account book or other document maintained in such factory, establishment, office or other premises.

[File No. S-38014/7/93-SS.I]

J. P. SHUKLA, Under Secy.

Printed by the Manager, Govt. of India Press, Ring Road, Mayapuri New Delhi-110064
and Published by the Controller of Publications, Delhi-110054, 1996